

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO  
3  
4 In Re: ) Docket No. 3:17-BK-3283 (LTS)  
5 )  
6 ) PROMESA Title III  
7 The Financial Oversight and )  
8 Management Board for )  
9 Puerto Rico, ) (Jointly Administered)  
10 )  
11 as representative of )  
12 )  
13 The Commonwealth of )  
14 Puerto Rico, et al. ) September 16, 2020  
15 )  
16 )  
17 Debtors, )

11  
12 In Re: ) Docket No. 3:17-BK-4780 (LTS)  
13 )  
14 ) PROMESA Title III  
15 The Financial Oversight and )  
16 Management Board for )  
17 Puerto Rico, ) (Jointly Administered)  
18 )  
19 as representative of )  
20 )  
21 Puerto Rico Power )  
22 )  
23 Authority, )  
24 )  
25 Debtor, )

19  
20 OMNIBUS HEARING  
21 BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN  
22 UNITED STATES DISTRICT COURT JUDGE  
23 AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN  
24 UNITED STATES DISTRICT COURT JUDGE

1 APPEARANCES:  
2

3 ALL PARTIES APPEARING TELEPHONICALLY

4 For The Commonwealth  
5 of Puerto Rico, et al.: Mr. Martin J. Bienenstock, PHV  
6 Mr. Brian S. Rosen, PHV  
7 Mr. Paul Possinger, PHV

8 For Puerto Rico Fiscal  
9 Agency and Financial  
10 Advisory Authority: Mr. Peter Friedman, PHV  
11 Mr. Luis C. Marini Biaggi, Esq.

12 For the Official  
13 Committee of Unsecured  
14 Creditors of all  
15 Title III Debtors: Mr. Luc A. Despins, PHV

16 For Ambac Assurance  
17 Corporation: Ms. Atara Miller, PHV

18 For Consul-Tech  
19 Caribe, Inc.: Mr. Fernando Van Derdys, Esq.

20 For Fuel Line Lenders: Mr. Michael H. Cassel, PHV

21 For Tradewinds: Mr. John Arrastia, PHV

22 For Whitefish Energy  
23 Holdings, LLC: Ms. Carmen D. Conde, Esq.

24 For Cobra Acquisitions: Mr. Abid Qureshi, PHV

25 For UTIER and SREAAEE: Ms. Jessica E. Mendez Colberg, Esq.

26 Proceedings recorded by stenography. Transcript produced by  
27 CAT.

	I N D E X	
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2	WITNESSES:	
3	None.	
4		
5	EXHIBITS:	
6	None.	
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1 San Juan, Puerto Rico

2 September 16, 2020

3 At or about 9:34 AM

4 \* \* \*

5 THE COURT: Good morning. This is Judge Swain.

6 MS. NG: Hi, Judge. It's Lisa.

7 THE COURT: Good morning.

8 Ms. Tacoronte, would you please announce the case?

9 COURTROOM DEPUTY: Good morning, Judge. Sure.

10 Bankruptcy case No. 17-3283, *In Re: The Financial*  
11 *Oversight and Management Board for Puerto Rico, as*  
12 *representative of the Commonwealth of Puerto Rico, et al.*, for  
13 Omnibus Hearing.

14 THE COURT: This is Judge Laura Taylor Swain  
15 presiding, and Magistrate Judge Judith G. Dein is also  
16 present.

17 Buenos dias. Welcome counsel, parties in interest,  
18 and members of the public and press. Today's telephonic  
19 Omnibus Hearing is occurring in what continue to be  
20 challenging times for all stakeholders in these Title III  
21 proceedings.

22 Our thoughts remain with all of the people on the  
23 island and on the mainland who have been affected directly and  
24 indirectly by the novel Coronavirus and with all who have been  
25 affected by this year's earthquakes and hurricanes. We hope

1 for progress, health, safety for all as restrictions are  
2 lifted and as the country continues to work to recover from  
3 the economic fallout and from natural disasters.

4 To ensure the orderly operation of today's telephonic  
5 hearing, all parties on the line must mute their phones when  
6 they are not speaking. If you are accessing these proceedings  
7 on a computer, please be sure to select mute on both the Court  
8 Solutions dashboard and on your phone. When you need to  
9 speak, you must unmute on both the dashboard and the phone.

10 I remind everyone that, consistent with court and  
11 judicial conference policies and the Orders that have been  
12 issued, no recording or retransmission of the hearing is  
13 permitted by any person, including but not limited to the  
14 parties, members of the public, and the press. Violations of  
15 this rule may be punished with sanctions.

16 I will be calling on each speaker during the  
17 proceedings. When I do, please identify yourself by name for  
18 clarity of the record. After the speakers listed on the  
19 Agenda for each of today's matters have spoken, I may provide  
20 an opportunity for other parties in interest to address  
21 briefly any issues raised during the course of the  
22 presentations that require further remarks.

23 If you wish to be heard under these circumstances,  
24 please state your name clearly when I invite you to do so.  
25 Don't just use the "wave" on the Court Solutions dashboard,

1 because I may not always be able to see that. I will call on  
2 the speakers if more than one person wishes to be heard.

3 Please don't interrupt each other or me during the  
4 hearing. If we interrupt each other, it is difficult to  
5 create an accurate transcript of these proceedings. Having  
6 said that, I apologize in advance for breaking the rule, as I  
7 may interrupt if I have questions or if you go beyond your  
8 allotted time. If anyone has any difficulty hearing me or  
9 another participant, please say something immediately.

10 The time allotments for each matter and the time  
11 allocations for each speaker are set forth in the Agenda that  
12 was filed by the Oversight Board on Monday, September 14th,  
13 2020. The Agenda, which was filed at Docket Entry No. 14274  
14 in case 17-3283 is available to the public at no cost on Prime  
15 Clerk for those who are interested.

16 I encourage each speaker to keep track of his or her  
17 own time. The Court will also be keeping track of the time  
18 and will alert each speaker when there are two minutes  
19 remaining with one buzz and, when time is up, with two buzzes.  
20 And here is an example of the buzz sound.

21 (Sound played.)

22 THE COURT: If your allocation is two minutes or  
23 less, you will just hear the two final buzzes.

24 If we need to take a break, I'll direct everyone to  
25 disconnect and dial back in at a specified time. Our schedule

1      this morning goes to 12:00 noon, and we will recommence at  
2      1:00, if necessary, for an afternoon session.

3              The first item is, as usual, status reports from the  
4      Oversight Board and AAFAF. As I requested in the Procedures  
5      Order, these reports have been made in writing in advance of  
6      this telephonic hearing and are available on the public docket  
7      and through Prime Clerk as Docket Entry Nos. 14315 and 14301  
8      in case 17-3283. I thank the Oversight Board and AAFAF for  
9      the care and detail reflected in the reports, which I find  
10     quite comprehensive.

11              I have some questions for the Oversight Board's  
12     counsel regarding the claims resolution process. And who will  
13     be speaking on this for the Oversight Board?

14              MR. BIENENSTOCK: Your Honor, this is Martin  
15     Bienenstock. I think my partner, Brian Rosen, will speak to  
16     the claims, the claims process.

17              THE COURT: Thank you. And good morning,  
18     Mr. Bienenstock.

19              MR. BIENENSTOCK: Good morning.

20              THE COURT: Mr. Rosen, are you there?

21              (No response.)

22              MR. BIENENSTOCK: Your Honor, this is Martin  
23     Bienenstock. My partner must be having some issues with the  
24     computer. I'll do my best to answer the claims process  
25     questions.

1                   THE COURT: All right. I guess let me just raise  
2 another question. Ms. Stafford is registered, but as a  
3 nonspeaking line. If she's there and we are able to convert  
4 that to a speaking line, is that something you'd prefer?

5                   MR. BIENENSTOCK: That would be fine.

6                   THE COURT: Ms. Ng, is Ms. Stafford on and can we  
7 allow her to speak?

8                   MS. NG: Give me one second. You said Ms. Stafford?

9                   THE COURT: Yes.

10                  MS. NG: I have Mr. Rosen on here from Proskauer.

11                  THE COURT: Yes.

12                  MS. NG: Do you want me to try to unmute him?

13                  THE COURT: Yes, please.

14                  MS. NG: Okay. Hold on.

15                  MR. ROSEN: Your Honor.

16                  THE COURT: Yes. Mr. Rosen.

17                  MR. ROSEN: Yes. I'm sorry. I've been trying to  
18 call out my name for a while. I'm sorry about that.

19                  THE COURT: I'm sorry. I don't know why you weren't  
20 able to completely unmute yourself, and I apologize if --

21                  MR. ROSEN: Not a problem.

22                  THE COURT: -- the problem was on our end. So  
23 welcome.

24                  So going to the questions about the proposal for  
25 managing the outstanding claims, the status report includes

1      details on a proposal for dealing with the backlog,  
2      specifically involving using a Prime Clerk facility that  
3      claimants can come to, to appear telephonically at a hearing  
4      concerning the objections. And I think that this is a  
5      promising development, but I do have some logistical questions  
6      that you may not be able to answer right away, that I think we  
7      all need to think through a bit. And I need some more  
8      information.

9                   So, first of all, do you know roughly how many claim  
10      objection responses there have been that will need to be  
11      addressed in this manner?

12                   MR. ROSEN: Your Honor, I don't have that number  
13      readily available for you, because this spans, as Your Honor  
14      recalls, going back all the way to December that we kept  
15      backlogging all of those. We could generate that information  
16      for you on an objection-by-objection basis, if that's helpful,  
17      and we can submit that to the Court hopefully tomorrow or the  
18      next day.

19                   THE COURT: That would be very helpful so that we can  
20      get a sense of the volume and which sets of claim objections  
21      would be taken up in the backlog clearing process.

22                   Other questions that I have are how you might be  
23      organizing the presentations of the motions and responses so  
24      that we can do the hearings in an orderly way. And in  
25      particular, how do you propose providing notice to the

1      claimants of the hearing and their opportunity to appear?

2              For instance, would you be contacting each of the  
3 claimants who filed a response so that they know this  
4 opportunity and you can confirm whether they intend to show up  
5 and whether they need an interpreter?

6              MR. ROSEN: Your Honor, I think because of the number  
7 of omnibus objections that were interposed, it's better if we  
8 try, for the Court's benefit, to group those in the categories  
9 in which those were interposed: Some of them deficient  
10 claims; some no liability. And that we group those so that  
11 you can have different segments of different categories for  
12 different periods of time.

13              I would suggest, though, that we definitely need to  
14 notify each and every claimant that did file a response, and  
15 to the best of our ability, we'll provide them with written  
16 notice. Some of these people, Your Honor, it's difficult to  
17 contact them. I'm not sure any other way to do it.

18              If the Court thinks that we should try telephonic, we  
19 could do that, although I'm not sure that's humanly possible.  
20 But definitely we would do it by written notice to each and  
21 every one of them. And we would include --

22              THE COURT: You could have --

23              MR. ROSEN: We would include in there, Your Honor,  
24 the request if they so desire the need for an interpreter.

25              THE COURT: Yes. I was thinking if you would include

1      in there a request that they call or somehow indicate whether  
2      they do wish to come to the hearing and whether they need an  
3      interpreter, that would help with projections for traffic  
4      control and safety measures and appropriate staging in terms  
5      of tranches or groups of objectors to be called.

6              And this is fairly granular in terms of logistics,  
7      but I think they are important given the public health  
8      situation. I appreciate your offer of a video link. I think  
9      that adds a layer of complexity and something else that could  
10     go wrong, so this is something that I would want to do just  
11     telephonically. But what kind of audio equipment do you  
12     expect to have there for the interpreters and the speakers?

13              I'm wondering about people having to handle handsets  
14     or headsets, and how interpreters and the claimants would be  
15     talking to each other and hearing the Court at the same time  
16     without getting the sort of feedback and such, and without  
17     having to handle things going back and forth. You know, would  
18     there be a couple of sets that could be sanitized between each  
19     speaker? Have you gotten to that level of thinking about how  
20     to make sure that everybody stays safe?

21              MR. ROSEN: Your Honor, we have not gotten down to  
22     that level yet, but I would assume that we would have speaker  
23     phones available so that there really is no need, other than  
24     for court personnel or Prime Clerk personnel, to touch the  
25     apparatus.

1                   The only issue I would see, Your Honor, is -- and I  
2 agree with you about the video hookup, but the question might  
3 be if someone wishes to present to you any documentation, our  
4 ability to see it -- would you want to receive that well in  
5 advance of the hearing?

6                   THE COURT: Yes. Our practice and, you know, the  
7 rules are that people need to file their written responses.  
8 And so perhaps the notice can direct people that if there is  
9 anything in addition that they want seen, they have to provide  
10 it in a particular way by a particular time. If they want to  
11 provide it in paper, perhaps it can be delivered to Prime  
12 Clerk and scanned and then e-mailed to all of us.

13                  But I think having a video hookup and people putting  
14 things spontaneously on an ELMO or something like that is  
15 probably not efficient and also would not make a good record  
16 for what has been displayed. And some of it might have to be  
17 translated from Spanish.

18                  MR. ROSEN: Okay.

19                  THE COURT: So I think a procedure for submission in  
20 advance would be the best thing.

21                  MR. ROSEN: So we'll lay that out, Your Honor, in a  
22 notice that will go to all of these people.

23                  THE COURT: Okay. And do you think, in light of the  
24 size of this undertaking and all of the unknowns, would it be  
25 best to have a smaller scale test run in the first instance

1      rather than try to queue up some huge numbers for October?

2                    MR. ROSEN: We can do that, Your Honor. I think if  
3 you'll allow us to do it -- we discussed at the outset here,  
4 which is to quantify the exact number. We'll have a sense as  
5 to how much we will be inundated in October. They may not be  
6 as large as we forecast. But I agree, we should -- just like  
7 we did with the ACR and the ADR, Your Honor, we'll do that  
8 test drive and take a subset of whatever that universe is.

9                    THE COURT: Very good. And how are you proposing to  
10 address the backlog of claim objections for claimants who have  
11 not submitted any responses at all? Because there has been --  
12 I'm sorry. Mr. Rosen.

13                    MR. ROSEN: No. I apologize for interrupting, Your  
14 Honor.

15                    My suggestion would be, Your Honor, that we submit  
16 orders with respect to those -- where those could be granted,  
17 and the balance of those would be heard at whatever hearing  
18 format we develop.

19                    THE COURT: So file some sort of notice of  
20 presentment, with an order expunging the claims to which there  
21 have been no response?

22                    MR. ROSEN: Yes, Your Honor.

23                    THE COURT: Thank you. That makes sense to me.

24                    And so I will look forward to further word and  
25 specifics on the proposal. And I thank you for being so

1       responsive to my question.

2                    MR. ROSEN: Thank you, Your Honor. And we'll work  
3 with your chambers to develop this and get you the  
4 information.

5                    THE COURT: Thank you so very much.

6                    AAFAF also filed a written status report for which I  
7 thank AAFAF and its counsel. Were there any further remarks  
8 that anyone from AAFAF wished to make?

9                    MR. MARINI BIAGGI: Good morning, Your Honor. Luis  
10 Marini, counsel for AAFAF. We don't have any further remarks  
11 at this time.

12                   THE COURT: Good morning, Mr. Marini, and thank you.

13                   Do any of the other counsel who are on the line have  
14 questions or comments that they wish to make in connection  
15 with the status report? If you do, state your name clearly  
16 and then wait for me to call on you to speak. And I'll wait  
17 about 30 seconds for anyone who wants to speak to unmute and  
18 say their name.

19                   MR. DESPINS: Good morning, Your Honor. Luc Despins  
20 with Paul Hastings.

21                   THE COURT: Good morning, Mr. Despins. All right.  
22 You may proceed.

23                   MR. DESPINS: Yes. Very short, Your Honor, because I  
24 will address this in the GO Objection context. But I want to  
25 make sure Your Honor knows that what's happening now is we're

1     || entering into a phase on the claims objections where  
2     || substantive claims objections are going to be made. And that  
3     || ties into the issue of the fact that people have only one  
4     || point of reference right now, which is the 3.8 or 3.9 percent  
5     || distribution to unsecured creditors. And, you know, that --  
6     || we think that causes prejudice to them.

7                     And I'll address that in the GO Objection context,  
8     but I wanted to flag that because we're talking about claims  
9     objections. We're entering a different phase of the claims  
10    objection process. Before we were doing duplicates and  
11    ministerial claims objections, but now we're entering in a  
12    different phase and I think that it's important to address  
13    that. But I'll do that in the GO context. Thank you, Your  
14    Honor.

15                     THE COURT: Thank you.

16                     Is there anyone else who wished to comment? Waiting  
17    a few more seconds.

18                     (No response.)

19                     THE COURT: All right, then. We will now move on to  
20    the first of the contested matters, which is Agenda Item II.1,  
21    Consul-Tech Caribe's administrative expense motion, which is  
22    Docket Entry No. 9845 in case 17-3283. We have 20 minutes  
23    allocated for argument.

24                     And the first speaker I have is Mr. Van Derdys for  
25    Consul-Tech for eight minutes.

1                   MR. VAN DERDYS: Yes. Good morning, Your Honor.

2 Fernando Van Derdys from the law firm Reichard & Escalera on  
3 behalf of movant, Consul-Tech Caribe.

4                   Your Honor, may I begin my argument?

5                   THE COURT: Yes, please.

6                   MR. VAN DERDYS: Sure. Yes, Your Honor.

7                   Particularly, on January 13, 2020, at Docket 9845, to read  
8 that, more than seven months ago, Consul-Tech filed its motion  
9 for payment of administrative expenses in the amount of 5.1  
10 million dollars, \$5,120,772.50, to be more precise.

11                  After several motions requesting an extension of time  
12 to parties' response to Consul-Tech's motion, on August 26,  
13 2020, Your Honor, again, seven -- more than seven months after  
14 the filing of the motion, the Commonwealth filed its  
15 opposition. The review of the opposition reveals that it is  
16 basically the further request for an indefinite -- for a sine  
17 die extension of time, Your Honor.

18                  In its written arguments that are plus and -- devoid  
19 of sound legal basis, it shall proceed to --

20                  COURT REPORTER: I'm sorry, Your Honor. This is the  
21 court reporter. If counsel could please repeat his last  
22 statement --

23                  MR. VAN DERDYS: I'm sorry, ma'am. I --

24                  THE COURT: And if you'd speak a little bit more  
25 slowly and perhaps just slightly louder, that would be

1      helpful.

2                    MR. VAN DERDYS: Thank you. Thank you. I'm sorry.

3                    I was watching the time. Right.

4                    The Commonwealth's main arguments in its opposition  
5 are as follows, or may be simplified as follows: First, that  
6 there are serious -- there is a serious concern as to the  
7 validity of the administrative expense claim; second, that  
8 Consul-Tech has not provided the Commonwealth with sufficient  
9 support to establish its claims; third, that the Commonwealth  
10 has not obtained purported data and analysis from the  
11 concerned agencies, despite its purported efforts to that  
12 effect; and lastly, that the relief sought by Consul-Tech is  
13 allegedly contrary to PROMESA Section 305, which prohibits  
14 this Honorable Court from interfering with the debtors'  
15 property or revenues, absent the consent of the Oversight  
16 Board.

17                   Okay. As stated in our brief filed on September 2 at  
18 Docket 14168, Your Honor, these allegations, we submit that  
19 they are misguided. First, as to the allegations that there  
20 is serious concern as to the validity of the claim, the Court  
21 should take notice that if payment analysis of the 5.1 million  
22 dollar administrative claim was prepared by the accounting  
23 firm Deloitte, which is a highly respected and national firm,  
24 both in the U.S. and outside -- and it was prepared at the  
25 request of the Commonwealth. Your Honor, it was submitted as

1 Consul-Tech Exhibit One to its Reply Brief at Docket No.  
2 14861.

3 Now, several conclusions are important -- several  
4 important conclusions about Consul-Tech's claim are apparent  
5 from the Deloitte report, Your Honor. First of all, according  
6 to the Deloitte report, the total net question costs in the  
7 report are 2.9 million dollars out of the 5.1 million dollar  
8 claim by Consul-Tech.

9 Of those 2.9 million dollars, Your Honor, 1.8 million  
10 dollars are invoices that are questioned solely and  
11 exclusively on the grounds that they lack certification.

12 Okay. I mean, they're questioned on grounds other than they  
13 lack certification. Okay. That means that they're questioned  
14 on grounds apart from the certification issues. And those  
15 arguments are contained at items one through 14, part 16 of  
16 the Deloitte report, Your Honor.

17 Okay. Now, if we take the 2.9 million dollars of the  
18 general objections, and we deduct the noncertified related  
19 costs, Your Honor, that leaves the amount of 1.1 million  
20 dollars that are only pending certification by the respective  
21 Commonwealth agencies, Your Honor. So the -- as to those 1.1  
22 million dollar invoices, the Deloitte firm did not present any  
23 objection as to their validity or propriety, Your Honor.

24 Okay. So, therefore, we would explain afterwards  
25 that the Commonwealth has the duty to certify those invoices

1 because, in effect, the only objection as to them is that they  
2 haven't been certified by the agents, but there's no objection  
3 as to the validity or propriety. Okay.

4 Now, the Deloitte -- okay. There is intimation to  
5 certain -- to the certifying invoices, Your Honor. We have  
6 another argument that is apparent from the same Deloitte  
7 report. Okay. The Deloitte report, at item number 15, item  
8 number 15 states that 2.7 million dollars in invoices were  
9 challenged as uncertified since they need -- for 5.1 million  
10 dollars, Your Honor. That means that approximately 2.8  
11 million dollars of the remaining invoices had to be certified.

12 Now, we concede that out of those 2.8 million dollars  
13 in certified invoices, some of them might be subject to  
14 additional objections on other grounds. Now, to extrinsically  
15 avoid considering objections other than -- I mean, other than  
16 certification, we subtracted the amount of 1.8 million  
17 dollars, which are cert -- which are objections dealing with  
18 issues other than certification. And when we subtract the 1.8  
19 million dollars from the 2.8 million dollar certified  
20 invoices, that leaves invoices which again amount to one  
21 million dollars that were properly certified by the government  
22 or the related agencies, and as to which Deloitte doesn't  
23 express any objection as to the propriety of our recent --

24 (Sound played.)

25 MR. VAN DERDYS: Your Honor. Okay.

1                   THE COURT: That means you have two minutes left.

2                   MR. VAN DERDYS: Yes. Now, under Article 57, Your  
3 Honor, the certified invoices must be paid within 15 calendar  
4 days after June 2020. So the government is not abiding by its  
5 own rules and regulations. As to the uncertified invoices,  
6 the government must abide by its contractual obligations and  
7 pay those invoices, Your Honor.

8                   Okay. Now, concerning the Commonwealth allegation  
9 that Consul-Tech has not provided sufficient evidence, Your  
10 Honor, the record reflects that Deloitte was able to prepare a  
11 full cost analysis with the evidence provided to it. So the  
12 argument as to the evidence is rather a lame argument, because  
13 the Commonwealth has the evidence that was sufficient for  
14 Deloitte to prepare a report. Okay. So that lacks merit.

15                  Now, as -- concerning that we are requesting an order  
16 to interfere with Section 305 of PROMESA, meaning that we  
17 cannot affect the debtors' revenue or property, Your Honor,  
18 again, the motion is miscon -- it misconstrues our claim.

19                  What we are asking is that the Court -- that the Commonwealth  
20 abide by its own rules and regulations and pay according to  
21 the laws it has established.

22                  And the Commonwealth states that Consul-Tech may be  
23 duly paid upon confirmation of the Plan of Adjustment. Your  
24 Honor, facing reality, at this juncture in time, there is no  
25 plan in the near future. Plus, Section 930 of Chapter Nine

1 doesn't apply here. And that section penalizes the debtor for  
2 being late and for making a Consul -- I mean, in reality,  
3 Consul-Tech has until -- all the time in the world to confirm  
4 a plan, Your Honor, and that is unfair to create a -- to  
5 Consul-Tech. What we propose is --

6 (Sound played.)

7 MR. VAN DERDYS: -- in light of this, we ask the  
8 Court to approve the uncontested amounts, and to leave the  
9 rest of the invoices to the ordinary litigation process, Your  
10 Honor, resolution process. Okay.

11 The Commonwealth has the evidence, Your Honor. Okay.  
12 Thank you.

13 THE COURT: Thank you. Thank you, Mr. Van Derdys.

14 || Mr. Marini for AAFAF for ten minutes.

15 MR. MARINI BIAGGI: Good morning, Your Honor. Luis  
16 Marini of Marini Pietrantoni Muniz for AAFAF. May I be heard,  
17 Your Honor?

18 THE COURT: Yes. Yes, please.

19 MR. MARINI BIAGGI: Good morning.

20 THE COURT: Good morning.

21 MR. MARINI BIAGGI: Your Honor, I'll briefly  
22 summarize our position, and then I'll try to respond to the  
23 arguments made by the movant.

24 Our position, Your Honor, as we laid out in our  
25 papers, is that their motion should be denied because there is

1      a serious concern as to the validity of their claim, and they  
2      have not provided the government with sufficient support to  
3      prove that they're entitled to a claim of this magnitude. And  
4      the government has not -- despite their best efforts, they  
5      have not been able to obtain all of the data and analysis from  
6      the agents involved to support and validate and reconcile the  
7      entirety of the claim.

8                Therefore, Your Honor, our position is that the  
9      relief requested in the motion is premature at best. It is  
10     also contrary to Section 305 of PROMESA, which this Court and  
11     the Court of Appeals have consistently found prohibit the  
12     Court from entering orders interfering with the debtors'  
13     revenues or property in the absence of the Board's consent.

14                Absent that consent or the government's agreement to  
15     pay claims in the ordinary course, PROMESA Section 314(b) (4)  
16     also provides that holders of allowed administrative claims  
17     have only a right to cash payment on the effective date of a  
18     future debtor Plan of Adjustment.

19                Now, the government will continue to do its best  
20     efforts to reconcile the claim and offer its payment on a  
21     total resolution of the claim. Now, Your Honor, the  
22     government is sympathetic and acknowledges the importance of  
23     paying post-petition claims and allowable administrative  
24     claims promptly. However, where as here, the debtor requires  
25     the time afforded to PROMESA to continue to analyze,

1     reconcile, and assert defenses, if applicable, to the  
2 allowance of post-petition claims, such as movant's, it should  
3 be granted that time until a determination of the validity of  
4 the claim.

5                 This is particularly critical in connection with this  
6 claim as the debtor has not obtained sufficient information to  
7 determine whether the vast majority of the claim asserted is  
8 proper or not. It has and continues to work to obtain the  
9 necessary information from over 20 agencies, which, as we  
10 detail in our objection, are agencies primarily involved in  
11 dealing with the response to the earthquake and the COVID-19  
12 crisis. And the government continues to reconcile, analyze,  
13 and determine whether to object or accept, in part or in  
14 whole, their claim.

15                 The debtor has to --

16                 THE COURT: Mr. Marini.

17                 MR. MARINI BIAGGI: Yes.

18                 THE COURT: I have a question for you. Consul-Tech  
19 represents in its Reply Brief and Mr. Van Derdys said in his  
20 argument today that Consul-Tech believes that approximately  
21 2.1 million dollars of the outstanding invoices are not  
22 disputed at this time. Is that correct?

23                 MR. MARINI BIAGGI: No, Your Honor. They --  
24 Consul-Tech makes that argument. It's in the Deloitte report,  
25 which they attached as an exhibit to their Reply. However,

1      Your Honor, that's not what the Deloitte report states.

2           The Deloitte report raises some objections to claims  
3 and identifies others in the report. Actually, 2.9 -- 2.1  
4 million that they detailed, the Deloitte report states that  
5 that amount is contingent upon an evaluation of outstanding  
6 supporting documentation from CSA for a final resolution of  
7 questionable costs. That's on page nine.

8           The Deloitte report also raises, and -- doesn't get  
9 into the issue, but raises a potential objection to the  
10 entirety of the claim, as to whether the claim was contracted  
11 according to the applicable government contracting guidelines  
12 at the time. So, Your Honor, that position we disagree with.  
13 And part of what the government is trying to do is finish the  
14 analysis and reconciliation and determine the validity of the  
15 entirety of the claim.

16           Now, they also cite to Act 57 as a basis to provide  
17 an argument to make a payment now. And our position, the  
18 government's position is that that is not what Act 57  
19 provides. Act 57 -- nowhere in Act 57 is there a waiver or a  
20 relinquishment of the government's ability to analyze,  
21 reconcile or dispute a claim. And Act 57 also does not  
22 provide a mechanism for partial payments on disputed claims.  
23 We understand that that does not apply here, because the claim  
24 is disputed for the reasons that we detailed in our -- in our  
25 objection.

1                   Now, Your Honor, even though they also -- the movant  
2 also refers to certifications, even though they have produced  
3 some certifications, and the government has some as well, the  
4 process of analyzing whether those certifications were  
5 rendered according to law, number one, and, number two,  
6 whether the underlying contracts were done according to the  
7 existing law at the time for government contracting, that  
8 process and the reconciliation of the claims is still ongoing.

9                   So our position, Your Honor, as we laid out in the  
10 papers, is that the motion should be denied, number one,  
11 because it is premature. It should be denied without  
12 prejudice to the ability to raise it upon confirmation, or in  
13 the alternative, that we be provided time to continue the  
14 process of analyzing and reconciling the claim and provide the  
15 Court with an update on where we are within 90 days.

16                   That's the position we have laid out in our papers,  
17 Your Honor. I don't know if the Court has any additional  
18 questions for me.

19                   THE COURT: I have no further questions for you at  
20 this time, and so I will return to Mr. Van Derdys for his  
21 two-minute rebuttal argument.

22                   MR. VAN DERDYS: Yes, Your Honor. Thank you.

23                   Again, Your Honor, very briefly, we summarize that  
24 the Commonwealth has respectively failed to rebut our  
25 argument. The motions do not specify what Consul-Tech has

1     allegedly not provided. They're only general allegations,  
2 Your Honor.

3                     Second, the *Detroit* and *Stockton* cases took two years  
4 to confirm. They haven't challenged the fact that at this  
5 juncture in time, we don't have any plan to be considered, and  
6 they don't know when a plan will be confirmed, Your Honor.  
7 And that being the case, the government should follow its own  
8 rules and regulations and statutes and stay according to the  
9 contract, the contractual rights. And moreover, in the plan  
10 -- he doesn't expect to confirm a Plan of Adjustment within  
11 any reasonable amount of time, Your Honor.

12                   So we restate the arguments in our motions, and we  
13 beg that the Court at least allow the resolution of the  
14 amounts that are not in controversy, and which those amounts  
15 have been failed to be rebutted by the government, Your Honor.  
16 Thank you.

17                   THE COURT: Thank you.

18                   I read very carefully all of the submissions before  
19 this morning's argument, and I have listened very carefully to  
20 these arguments. Before the Court is Consul-Tech Caribe,  
21 Inc.'s Motion for Allowance and Payment of Administrative  
22 Expense Claims, which is Docket Entry No. 9845 in case  
23 17-3283. I refer to this as the Motion.

24                   Through the Motion, Consul-Tech seeks an order  
25 allowing an administrative expense claim in its favor against

1      the Commonwealth in the amount of \$5,120,772.50, and directing  
2      the Commonwealth to pay Consul-Tech that amount on the first  
3      business day after its allowance. Consul-Tech's counsel has  
4      also advocated here for at least a partial payment of the  
5      portion of the claim that Consul-Tech argues is undisputed.

6              The Court has considered carefully the parties'  
7      submissions in connection with the Motion and the arguments.  
8      For the following reasons, the Motion is denied without  
9      prejudice. As this Court has recognized previously in these  
10     Title III proceedings, PROMESA does not require Title III  
11     debtors to pay administrative expense claims, including those  
12     that are undisputed, prior to the effective date of a  
13     confirmed Plan of Adjustment. See 48 United States Code,  
14     Section 2174, and Docket Entry No. 8886 in case 17-3283, at  
15     pages two to three.

16              Viewing Consul-Tech's arguments against that  
17     backdrop, Consul-Tech has failed to proffer any compelling  
18     reason for the Court to adjudicate the question of allowance  
19     of its claim at this juncture rather than afford the  
20     Commonwealth additional time to reconcile the claim,  
21     particularly considering AAFAF's representations regarding the  
22     active roles of PREMA and other Commonwealth agencies in  
23     responding to the earthquakes affecting the island earlier  
24     this year, the COVID-19 pandemic, and the recent tropical  
25     storms. The Court is persuaded that it will be mutually

1      beneficial for the parties to further engage in their  
2      respective efforts to reconcile Consul-Tech's claims,  
3      including by providing responses to any outstanding requests  
4      for documentation and by continuing the efforts to resolve the  
5      claims consensually. In the event that the parties are unable  
6      to reach agreement following their further meet-and-confer  
7      efforts, the Court will consider the merits of Consul-Tech's  
8      claim and AAFAF's substantive objections thereto at an  
9      appropriate time.

10              Accordingly, the motion is denied without prejudice.  
11      The parties are directed to meet and confer in a further  
12      effort to obtain any necessary documentation and resolve  
13      Consul-Tech's claim consensually. And in order to assure  
14      sufficient time for meaningful progress, the Court will  
15      require a joint status report by March 16, 2021, and the Court  
16      will enter an order to this effect.

17              Thank you very much, Counsel.

18              MR. VAN DERDYS: Thank you.

19              THE COURT: The next contested item on the Agenda is  
20      Item II.2, which is PREPA's motion to reject certain power  
21      purchase and operating agreements, which is Docket Entry No.  
22      13579 in case 17-3283, and Docket Entry No. 2050 in case  
23      17-4780.

24              We have a total of 20 minutes allocated for the oral  
25      argument, beginning with counsel for PREPA for seven minutes.

1      And I have Mr. Possinger down as the speaker.

2                    MR. POSSINGER: -- representative of PREPA --

3                    THE COURT: Mr. Possinger, are you there?

4                    MR. POSSINGER: Hello. I am. Did you hear me, Your  
5 Honor?

6                    THE COURT: I heard you for a second and then you cut  
7 off. Can you try unmuting again?

8                    MR. POSSINGER: Yes.

9                    THE COURT: And Ms. Ng, would you try doing whatever  
10 you can to unmute?

11                  MS. NG: I unmuted him, because I think he was trying  
12 to talk. So I just unmuted him, and that's why you heard part  
13 of it.

14                  MR. POSSINGER: Understood, Your Honor. I didn't  
15 realize I had to unmute on the screen as well as my phone, but  
16 I think we're good.

17                  THE COURT: Yes. Everybody should note, you have to  
18 do both with this system, unmute both the screen and the  
19 telephone. Thank you.

20                  Good morning, Mr. Possinger. You may begin.

21                  MR. POSSINGER: Good morning, Your Honor. This is  
22 PREPA'S motion to reject 27 contracts for the development of  
23 renewable energy projects. And before I get started, I just  
24 want to point out, so Your Honor has the information, we had  
25 three objections filed to this motion. One of them, GS

1      Fajardo, was withdrawn on Monday, and they also withdrew their  
2 motion to sever their contract from these proceedings, in case  
3 Your Honor missed that. I think we just now have two  
4 remaining objections to this.

5                    THE COURT: Yes.

6                    MR. POSSINGER: A brief background here. These  
7 contracts go back many years. They go back to 2011, to 2013.  
8 During that time, PREPA entered into around 60 power purchase  
9 and operating agreements for the development of renewable  
10 energy projects in Puerto Rico, wind -- primarily wind and  
11 solar.

12                  Of the 60 contracts, some of them have been completed  
13 and are now providing power, some remain under consideration  
14 by PREPA and the Oversight Board. The 27 that are subject to  
15 this motion are not operational. Most of them have not even  
16 begun construction, and the few that have are in the very  
17 early stages of construction. And this is now, what, seven to  
18 nine years after these contracts were signed.

19                  Additionally, PREPA has determined that the rates for  
20 sale of power from these projects contained in these con -- in  
21 each of these 27 contracts significantly exceed the price that  
22 PREPA can obtain in the current marketplace, and that would  
23 burden PREPA's customers with expensive power when cheaper  
24 renewable options are now available.

25                  PREPA spent some time reviewing all these contracts

1     throughout 2019. They attempted to renegotiate certain of  
2     those, reviewed all of these factors, the time to completion  
3     and the cost of the power ultimately provided by these  
4     projects, and determined to terminate each of these 27  
5     contracts in accordance with their terms.

6                   In March of this year, PREPA sent written notice of  
7     termination to each of these counterparties. The Oversight  
8     Board agreed with the decision to terminate and also agreed to  
9     seek rejection of the contracts as well to avoid any argument  
10    that the termination was either not valid or not effective.

11                  On that point, although PREPA doesn't believe it has  
12    any liability for breach or termination or rejection damages,  
13    we're not seeking any finding in that regard today. The  
14    rights of parties to assert rejection damage claims are not  
15    implicated by the relief that we're seeking, they're not  
16    prejudiced, and the Order that we -- the Proposed Order that  
17    we provided expressly reserves the rights of parties to seek  
18    rejection damages.

19                  As Your Honor has noted in your decision granting the  
20    motion to assume the EcoElectrica and Naturgy contracts, the  
21    standard for assumption, or here, rejection, is whether the  
22    rejection meets the business judgment rule, which calls for  
23    deference to the decision of the PREPA governing board and the  
24    Oversight Board in the absence of evidence of bad faith in  
25    making the decision to reject. Here, rejection will clearly

1      benefit PREPA and, more importantly, its customers by  
2      relieving them from over market renewable energy costs from  
3      projects that may never be built in the first place.

4              As I indicated, we got -- we received three  
5      objections. GS Fajardo withdrew theirs. Tradewinds Energy  
6      asserted an objection, which is really a reservation of rights  
7      to make sure that its right to assert a rejection damage claim  
8      is not prejudiced by this Order. Again, the Order does  
9      reserve the right for parties to assert rejection damages.

10              The third objection is from a counterparty called GG  
11      Alternative, which is cast as a limited objection that appears  
12      to oppose rejection on the basis of alleged breaches of its  
13      contract by PREPA pre-rejection, and that rejection will cause  
14      harm to its business interests and environmental policy.

15              We submitted the Declaration of Fernando Padilla in  
16      connection with this motion. That Declaration doesn't target  
17      or discuss any particular contract, but whether PREPA was in  
18      breach of any of these contracts isn't relevant to rejection.  
19      If anything, it might weigh in favor of the decision to reject  
20      to avoid a burdensome share cost.

21              Regarding policy, energy policy, environmental  
22      policy, as we've argued several times in this Court, this is  
23      not the forum to litigate policy choices. Energy policy,  
24      renewable energy targets are the subject of Puerto Rico law  
25      and regulation, the integrated resource plans that are

1 submitted to the Puerto Rico Energy Bureau for approval, and  
2 the Certified Fiscal Plans of the Oversight Board.

3 We submit that the rejection of these 27 contracts is  
4 consistent with the Certified Fiscal Plan, and we ask that the  
5 motion be granted. With that, unless Your Honor has any  
6 questions, I would yield the balance of my time for rebuttal.

7 THE COURT: Thank you. I have no further questions  
8 at this time, and so I will turn to counsel for Tradewinds,  
9 Mr. Arrastia.

10 And remember to unmute both your phone and, if you  
11 have your computer interface up, unmute on the computer.

12 MR. ARRASTIA: Thank you, Your Honor. This is John  
13 Arrastia on behalf of Tradewinds.

14 Originally we had filed the limited objection and  
15 reservation of rights solely because of some discomfort over  
16 the language, but in its Reply, the Oversight Board clarified  
17 its position, and Tradewinds finds that clarification renders  
18 the motion and the relief sought acceptable. So with that,  
19 there is no objection after the Reply that was filed by  
20 PREPA.

21 THE COURT: Thank you, Mr. Arrastia.

22 MR. ARRASTIA: Thank you, Your Honor.

23 THE COURT: And so now I will turn to counsel for GG,  
24 Mr. Santos Barrios, who's been allotted four and a half  
25 minutes.

1                   Mr. Santos Barrios, you need to unmute your phone and  
2 the computer screen.

3                   (No response.)

4                   THE COURT: I am not seeing him on the speaking line  
5 registration.

6                   MS. NG: Judge, I don't see him on at all.

7                   THE COURT: He's not on at all? Let's see. What is  
8 his law firm? I don't have the full list. So if anyone else  
9 from counsel for GG is on with a speaking line, would you  
10 please say something if you wish to speak to this motion?

11                  (No response.)

12                  THE COURT: It looks like I am not seeing --

13                  MS. NG: Judge, I don't see anybody listed with that  
14 law firm as either listening or speaking.

15                  MR. POSSINGER: Your Honor, this is Paul Possinger  
16 again. In advance of this hearing, I reached out to all three  
17 counsel, when GS Fajardo's objection was still on the docket,  
18 to ask about time allocation. And I heard from Mr. Arrastia  
19 and from GS Fajardo, but I did not hear back from GG  
20 Alternative. And that's why we just put four and a half  
21 minutes per side after Mr. Arrastia indicated he would like a  
22 minute.

23                  THE COURT: All right. Well, that explains it. So  
24 there is no appearance, and I see that no informative motion  
25 for an appearance was filed by counsel for GG Alternative.

1      And there is no one on the phone lines today. So if you would  
2      like to make whatever concluding remarks you have in mind,  
3      Mr. Possinger, I will then make my ruling.

4                    MR. POSSINGER: No, Your Honor, I don't have anything  
5      to add to my opening remarks.

6                    THE COURT: Very well then. I will make my ruling  
7      now.

8                    The Court has considered carefully the written  
9      submissions and arguments. Actually, what I will do is state  
10     now that the motion is granted, and the Court will enter an  
11     order explaining its reasoning in short order.

12                  MR. POSSINGER: Thank you, Your Honor.

13                  THE COURT: Thank you.

14                  And so the next Agenda Item is PREPA's motion to  
15     allow LUMA -- the LUMA administrative expense claim that is  
16     Docket Entry 13583 in case 17-3283 and Docket Entry 2053 in  
17     case 17-4780. And 40 minutes have been allowed for arguments,  
18     beginning with 12 minutes by Mr. Bienenstock for PREPA.

19                  Mr. Bienenstock.

20                  MR. BIENENSTOCK: Yes. Good morning, Your Honor.

21                  THE COURT: Good morning.

22                  MR. BIENENSTOCK: Martin Bienenstock of Proskauer  
23     Rose, LLP, for the Oversight Board as Title III representative  
24     of PREPA.

25                  Your Honor, the theme of my remarks will be

1 simplification, given all of the pleadings, paper, discovery  
2 that has preceded this hearing. The motion we're addressing  
3 was filed by -- on behalf of PREPA on July 7, 2020. The  
4 relief requested is an order providing that LUMA Energy has an  
5 administrative claim for unpaid front-end transition  
6 obligations incurred under its T&D, Transmission and  
7 Distribution Contract, with PREPA.

8 By simplification, what I mean is this: We submit  
9 that the only relevant and material facts that really bear on  
10 whether this motion should be granted or denied are the fact  
11 that LUMA Energy has this T&D contract with PREPA, which is an  
12 undisputed fact. And everyone has the contract. It's a  
13 matter of public record.

14 We have asserted that there are two statutory bases  
15 on which LUMA Energy should be deemed to have its  
16 administrative claim. And I want to emphasize, we are not  
17 asking now for the claim to be allowed in any particular  
18 amount. LUMA Energy has to perform in accordance with  
19 contracts to entitle itself to be paid any amount, starting  
20 with the first penny.

21 And we're not asking the Court to decide in advance  
22 whether it's going to satisfy its contractual obligations.  
23 What we're asking for, because it's a condition of LUMA  
24 Energy's performance of the contract, imposed by LUMA Energy,  
25 is simply to register the fact that by entering into this

1      contract with PREPA Energy, if it satisfactorily performs, the  
2      claimant will have -- will be an administrative claim under  
3      PROMESA.

4            We want to --

5            THE COURT: I'm sorry, Mr. Bienenstock. So you're  
6      asking for a sort of conceptual approval of expenses incurred  
7      under this aspect of --

8            COURT REPORTER: I'm sorry, Your Honor. This is Amy,  
9      the court reporter.

10           THE COURT: Yes.

11           COURT REPORTER: I think something happened in the  
12      courtroom and it's not coming through my headphones.

13           THE COURT: All right. Do you need me to stop while  
14      you figure that out?

15           COURT REPORTER: If you could, for just one second.  
16      Let me try switching headphones and see if that helps.

17           THE COURT: Yes. We'll take a pause.

18           (Discussion held off the record)

19           COURTROOM DEPUTY: Your Honor, we're going to try to  
20      continue through the speakers of the courtroom. I'm going to  
21      mute ourselves for a second while I move the equipment so I  
22      don't make some unnecessary noise. Okay? My apologies.

23           THE COURT: All right.

24           COURTROOM DEPUTY: Can you please test the audio,  
25      Your Honor?

1                   THE COURT: Testing, one, two, three.

2                   COURTROOM DEPUTY: Your Honor, if you and the parties  
3 would be so gracious and speak a little louder and take us in  
4 mind, because she's working under difficult conditions. And  
5 our apologies again.

6                   THE COURT: Is there any possibility of being able to  
7 swap out that piece of equipment or is this the best that we  
8 can do with the reporter working with the speaker?

9                   COURTROOM DEPUTY: Pablo is on his way. We just  
10 don't want to, you know --

11                  THE COURT: All right.

12                  COURT REPORTER: It's not the headphones, Your Honor.  
13 It's something in the actual line that feeds to the  
14 headphones.

15                  THE COURT: Okay.

16                  COURTROOM DEPUTY: So it's something that Pablo has  
17 to deal with, not us, because he's the one that knows what to  
18 do.

19                  So we don't want to make you wait any longer. We can  
20 continue until he comes in and fixes this.

21                  THE COURT: All right. Good. So when he comes in,  
22 say something and we will pause again --

23                  COURTROOM DEPUTY: Will do, Your Honor.

24                  THE COURT: -- so that it can be fixed. All right?

25                  COURTROOM DEPUTY: Thank you very much.

1                   THE COURT: And are you hearing me all right at this  
2 volume?

3                   COURTROOM DEPUTY: Yes.

4                   THE COURT: Okay. I will try to keep my voice up.  
5 And so, everyone, thank you for your patience.

6 Mr. Bienenstock, thank you for your patience.

7                   The question I was about to ask Mr. Bienenstock is  
8 whether the approval that's being sought here is conceptual  
9 rather than specific, so that you are not asking me to grant,  
10 for instance, the 60 million dollar fixed fee approval as such  
11 as an administrative expense now, but rather saying that  
12 expenses that are ultimately incurred for services performed  
13 and in an approved manner will be considered administrative  
14 expenses?

15                  MR. BIENENSTOCK: Yes, Your Honor. That's exactly  
16 right. I wouldn't describe it as conceptual as much as we're  
17 asking for relief as to identifying the type of claim that  
18 LUMA Energy has in exchange for performing under the contract,  
19 because that's a condition of the contract.

20                  We're not asking for the liquidation or amount of the  
21 claim, because that, as Your Honor just said, is subject to  
22 satisfactory performance of LUMA Energy's contractual  
23 obligations. It's as if LUMA Energy is saying, I will render  
24 certain service in exchange for a right to payment that is an  
25 administrative right, to the extent I earn it.

1                   And it was made part of the contract, and I guess  
2 LUMA Energy was wise in doing that given the objections that  
3 have come out in opposition to the grant of the administrative  
4 status. It didn't want, and it understandably did not want to  
5 perform and then have to find out later whether it had an  
6 administrative claim or not.

7                   So that's what we're asking for. I hope that answers  
8 Your Honor's question. If not, I can double back, but --

9                   THE COURT: I think it does. I am just wondering  
10 whether the precise language that you have proposed and that I  
11 gather is in the contract is that limited in its effect. The  
12 Proposed Order says, "Pursuant to Sections 503 and 507(a)(2)  
13 of the Code, upon entry of this Order, LUMA Energy shall have  
14 an allowed administrative expense claim for any accrued and  
15 unpaid front-end transition obligations incurred by PREPA  
16 under the T&D contract."

17                   I'm not sure whether there's a definition of  
18 "accrual" or how termination fees or anything like that would  
19 fit into the language that's been proposed. Do you have a  
20 view on that?

21                   MR. BIENENSTOCK: Yes, Your Honor. By "incurred by  
22 PREPA under the T&D contract," we believe that means it has to  
23 be validly incurred under the contract. So if LUMA Energy  
24 does not perform correctly, then PREPA would not be incurring  
25 an obligation under the contract. To the extent it does

1 perform correctly, then PREPA incurs an administrative expense  
2 level liability under the contract to the extent of the  
3 satisfactory performance.

4 THE COURT: Thank you.

5 MR. BIENENSTOCK: Thank you.

6 So we've proposed two statutory bases for granting  
7 this relief. One is based on Bankruptcy Code Section  
8 503(b)(1)(A) for the actual necessary cost of preserving the  
9 estate. And we've explained that while there is no estate in  
10 Title III, as there is no estate in Chapter Nine cases, the  
11 definition of "property of the estate" in PROMESA Section  
12 301(a)(5), interpreting "property of the estate" as property  
13 of the debtor, means, for this purpose of 503(b)(1)(A), that  
14 the costs are to preserve the debtors' property as opposed to  
15 the estate.

16                   We recognize that some of the objectants have said,  
17 well, 301(a)(5) defines "property of the estate," not just  
18 "estate," so the definition does not apply here. We don't  
19 think that's correct, but if it is, then the second statutory  
20 basis for the relief is that under the preamble in Bankruptcy  
21 Code Section 503(b), it says the Court can allow  
22 administrative claims "including." So "including" means it's  
23 not an exclusive list, and for purposes of here, where you  
24 don't have an estate, there can be administrative claims for  
25 preserving the debtor's property. And we think basically the

1 || laws of nature compel that outcome.

2                   Your Honor, the most telling part of all of the  
3                   objections is what they do not say. What they do not say is  
4                   if there's no administrative claim for performing under the  
5                   contract, what is there? How can a Title III debtor have  
6                   people work under contracts if they don't have a right to be  
7                   paid before prepetition unsecured claims? The system just  
8                   doesn't work.

9                   And it cannot be that Congress wrote an absurd  
10                   statute, so the word "including" really has to be used here if  
11                   property of the estate is not going to be -- if preserving the  
12                   estate is not going to be interpreted as preserving property  
13                   of the debtor. There must be a way under which it's safe to  
14                   work for a Title III debtor, and that can only be if there's  
15                   an administrative claim the Court can grant under 503(b) in  
16                   exchange for performing under the contract.

17 Now, all of the objections, they're really in two  
18 batches. They either take issue with whether there's benefit  
19 under the contract, or they take issue with the effect the  
20 grant of this administrative level priority might have on  
21 other claimants.

22 In terms of taking issue with whether there is a  
23 benefit under the contract, the first thing I'd point out is  
24 503(b)(1)(A) doesn't use the word "benefit."

25 (Sound played.)

1                   MR. BIENENSTOCK: It uses the term preserving,  
2 preserving the property. But basically, if a contract party  
3 does what the debtor says it must do under the contract, one  
4 cannot second guess later and say it wasn't preserving; it  
5 wasn't maintaining; it wasn't beneficial. The parties can  
6 only do what the contract says it should do. It's PREPA's  
7 issue, not the contract party's issue.

8                   Second, to the extent the grant of any admin claim  
9 has an impact on other claims, that's irrelevant. One cannot  
10 say to someone that PREPA does business with, you're supplying  
11 labor and materials but because that might have an impact on  
12 other claimants, we won't pay you; we'll pay the others. The  
13 system can't work in that fashion. So that's why while we are  
14 sensitive to everybody's positions and needs and concerns, we  
15 don't think, for purposes of this motion, that's relevant or  
16 material.

17                   And those were really my remarks for the direct,  
18 unless the Court has questions.

19                   THE COURT: Thank you, Mr. Bienenstock.

20                   We will now turn to Mr. Friedman for AAFAF, who's  
21 been allocated five minutes.

22                   MR. FRIEDMAN: Thank you, Your Honor. It's Peter  
23 Friedman from O'Melveny & Myers on behalf of AAFAF.

24                   Your Honor, LUMA'S agreement to enter into this  
25 contract was the culmination of an extensive and comprehensive

1      process motivated by the recognition that the T&D system has  
2      to be -- has to be transformed in order to move Puerto Rico's  
3      recovery forward.

4              The government parties, all of them, including AAFAF,  
5      specifically agreed to seek administrative expense treatment  
6      here in exchange for substantial benefits, and we do this  
7      against a backdrop of ceaseless litigation over everything  
8      that PREPA does. That's what I want to make clear to the  
9      Court and to any -- sort of everybody else listening. This is  
10     not something that AAFAF intends to do with respect to every  
11     contract. This is a particularly unusual one. And I think  
12     the Court knows that from the past three plus years where this  
13     is the first time we've sought this relief.

14              The relief is critical because without it, LUMA has  
15     the right to walk away. And as does -- and it made clear in  
16     the motion, that would pose substantial problems for Puerto  
17     Rico's recovery.

18              The objectors argue that the administrative expense  
19     motion has to be denied, and Mr. Bienenstock said, because  
20     503(b) (1) (A) only allows for preserving an estate and there is  
21     no estate in Title III. Mr. Bienenstock made some important  
22     textual points, but rereading 503 this morning, I just thought  
23     it's a clear -- it's a statute that Congress clearly left a  
24     lot of work for the Court to do in parsing what makes sense in  
25     the context of municipal bankruptcy.

1                   And I say that because it was clear when Congress  
2 incorporated the statute into PROMESA in total, it was vastly  
3 overinclusive. We know, for example, 503(b)(1)(B) can never  
4 apply, because Puerto Rico is subject to certain kinds of  
5 taxes; or 503(b)(3)(A) can't apply, because there are no  
6 involuntary cases versus a government debtor. And there are  
7 other examples.

8                   But with respect to the kind of claim here, either  
9 whether under the including theory that Mr. Bienenstock put  
10 forward or just the plain textual analysis, there is no  
11 structural or logical reason that, with proper government  
12 consent, and obviously that includes AAFAF, an administrative  
13 claim can't be granted for the purpose of preserving and  
14 enhancing PREPA's property.

15                  And the other point I want to make is that the  
16 objectors' argument effectively I think relies on the *OTB*  
17 decision from Judge Glenn in many respects, but I think  
18 they're misreading *OTB*, as are -- or at least misapplying it.  
19 As the Court knows from the 926 context, Judge Glenn in *OTB*  
20 --

21                  (Sound played.)

22                  MR. FRIEDMAN: -- has been exceptionally deferential  
23 to government powers, and very respectfully, properly of state  
24 and municipal sovereignty. But those concerns are not  
25 implicated here, because the Oversight Board debtor -- as

1      debtors' representative for 305 purposes, and AAFAF and the  
2      Oversight Board with respect to Section 302 -- or 303, have  
3      all consented to the grant of relief.

4                   So, in fact, rather than undermining state  
5      sovereignty here, it would be enhanced by permitting the  
6      debtors and the government together to come to this Court and  
7      obtain necessary relief to move the overall restructuring  
8      forward. So the concerns emanating in the *OTB* opinion I don't  
9      think are applicable here.

10                  Unless the Court has questions, I think those are the  
11     key points that AAFAF wanted to make in support of this  
12     motion.

13                  THE COURT: Thank you, Mr. Friedman. I have no  
14     further questions for you.

15                  MR. FRIEDMAN: Thank you, Your Honor.

16                  THE COURT: And so we will turn to Mr. Despins, who's  
17     been allocated five minutes.

18                  Mr. Despins, you need to unmute.

19                  MR. DESPINS: I apologize, Your Honor. I was  
20     unmuting myself.

21                  THE COURT: I hear you.

22                  MR. DESPINS: Good morning again, Your Honor.

23                  THE COURT: Good morning.

24                  MR. DESPINS: As Your Honor knows, because I know  
25     you, you've read all the objections, we are not -- I want to

1      be clear, we're not arguing, to start with, we are not raising  
2      the issue of the fact that there cannot be administrative  
3      expense claims in Title III. And also, we are not -- the  
4      Committee is not opposed to privatization of PREPA. So I want  
5      to make sure that's off the table, because the Oversight Board  
6      paints a pretty wide brush when it describes -- with a pretty  
7      wide brush when it describes the objectors.

8                   So I want to address two issues, Your Honor, today.  
9      The first one is the issue of late fees. And we cited, you  
10     know, extensive case law explaining that, you know, late fees  
11     for a list of expense claims are not allowable because  
12     "there's no benefit to the estate."

13                  And I want to make sure Your Honor knows that the  
14     concession -- or not the concession, the clarification made by  
15     Mr. Bienenstock doesn't resolve that because he's asking the  
16     Court to say today that there is a benefit of the estate for  
17     these future late fees. Whether it's 100 dollars or a million  
18     dollars is a different story. I understand that's a reserve.  
19     But the issue of benefit to the estate, they're asking you to  
20     opine on that today. And while the cases that --

21                  THE COURT: Mr. Despins.

22                  MR. DESPINS: Yes, Your Honor.

23                  THE COURT: May I just ask you a practical question  
24     about late fees? I'm sure no entity, no debtor wants to incur  
25     late fees, but there may be situations in which an entity

1     needs to make cash flow decisions and a contract may provide  
2     for a late fee or penalty provision to disincentivize that  
3     choice. But without that choice, there may be a breach of a  
4     contract. So how is it that you say a provision for a late  
5     fee and incurring a late fee could never, ever be beneficial  
6     to a debtor?

7                    MR. DESPINS: I can only refer, Your Honor, to the  
8     cases that we've cited where the courts make a real  
9     distinction between late fees incurred in the context of  
10    assumption of contracts, which are permissible, but not  
11    otherwise, especially the Massachusetts case we've cited. And  
12    all the cases that the Board cited are all in the context of  
13    assumptions of leases or contracts, but contained a lengthy  
14    provision where the Court expressly said that, we don't need  
15    to make a finding of benefit to the estate.

16                    But I understand your point practically, Your Honor.  
17    I can only tell you that the cases that we've cited, and  
18    there's been no contrary cases cited by the Board --

19                    (Sound played.)

20                    MR. DESPINS: -- other than the context of assumption  
21    of contracts.

22                    But let me move on to the second point, because I  
23    hear the beep. The second point is the reasonable veto over a  
24    plan. And I think it's very important to understand what our  
25    concern is, Your Honor. The Board says, don't worry about

1      that because if we use it in the wrong way, they -- we will  
2      override that, and we'll get to court and we'll have the Court  
3      override that.

4              The Committee is not only concerned about that, but  
5      the Committee is concerned about the Board using this consent  
6      right or veto right as a sword in the context of a future  
7      plan. The same way, for example, with respect to the RSA  
8      Motion, the 9019 Motion, they told you at the beginning of  
9      that that it was essential that that motion be granted for  
10     privatization to occur. Well, today we have a motion where  
11     there is privatization, but there's no 9019 motion that's been  
12     approved.

13              So the point is that they're going to use this as a  
14     club, and we don't think it's appropriate. Surely, there can  
15     be a provision that says that the Plan should not affect the  
16     rights of LUMA, meaning, you know, the rights to get paid, the  
17     right to perform and all of that. But they shouldn't have  
18     general language that says they have a reasonable veto right,  
19     because they should not, and the Court should be concerned  
20     about giving them that club.

21              Thank you, Your Honor.

22              THE COURT: Thank you.

23              Next is Mr. Cassel for the Fuel Line Lenders for five  
24     minutes.

25              MR. CASSEL: Good morning, Your Honor. Michael

1      Cassel of Wachtell, Lipton, Rosen & Katz for the Fuel Line  
2      Lenders.

3                    THE COURT: Good morning.

4                    MR. CASSEL: Good morning, Your Honor.

5                    We are here objecting on one simple ground, which is  
6      that Section 503(b)(1)(A) of the Bankruptcy Code, which  
7      provides for administrative expense treatment for the actual  
8      necessary cost of preserving the estate, does not apply in the  
9      PROMESA context because there is no estate.

10                  We've raised this Section 503(b)(1)(A) issue in our  
11     objection to the 9019 Motion. It was never resolved there.

12                  And our position is simple: The statute uses the word  
13     "estate." All parties, Mr. Bienenstock, Mr. Friedman agree  
14     there is no estate. The First Circuit in *Gracia-Gracia* said  
15     that the concept of the estate has no role under PROMESA.

16                  So our position is supported by the text of the  
17     statute. It's also uniformly supported by the case law,  
18     including in Judge Glenn's decision in *Off-Track Betting*,  
19     which was a pretty comprehensive examination of both the text  
20     of the statute and the policy considerations underlying  
21     Chapter Nine. It also considered the commentary, including  
22     *Collier* and *Norton*, and Judge Glenn relied on those. And all  
23     that case law, the commentary squarely rejects what the  
24     Oversight Board is presenting today.

25                  And in response to that, the government parties make

1      a number of arguments, most of which were raised for the first  
2      time in their Reply Brief. The first argument, and you heard  
3      it today from Mr. Friedman, is that Section 503(b)(1)(A)  
4      applies, at least when the Oversight Board and AAFAF consent.  
5      There's no real support for that position in the statute.

6              It also doesn't distinguish *Off-Track Betting*, which  
7      is a case where the debtor there actually expressly consented  
8      to the Court determining whether the claim qualified as an  
9      administrative expense. And Judge Glenn rejected the  
10     administrative expense, notwithstanding the consent, because  
11     requiring the Court to decide questions on whether particular  
12     expenses benefit the estate would violate Section 903 of the  
13     Bankruptcy Code.

14              And that is mirrored here in PROMESA Section 303,  
15     which would simply entangle the Court in questions like, does  
16     this particular expense benefit the debtor. Judge Glenn  
17     decided that was an unwise approach to take, even if the  
18     government parties consented.

19              The second approach the government parties offer  
20     today is that the word "estate" always equals the word  
21     "debtor" in PROMESA and Chapter Nine. That argument, we don't  
22     think it works. It's sort of not supported by the text of  
23     PROMESA or Chapter Nine.

24              Mr. Bienenstock referred to PROMESA Section  
25     301(c)(5), which, like Section 902 of the Bankruptcy Code,

1 provides that property of the estate, and that's a defined  
2 term, "property of the estate" is to be interpreted as  
3 property of the debtor. Section 503(b)(1)(A) does not use the  
4 phrase "property of the estate."

5 (Sound played.)

6 MR. CASSEL: So on the face of the text, it's a  
7 definitional tool that PROMESA Section 301(c)(5) just doesn't  
8 apply on its terms.

9 Mr. Bienenstock also referred to this sort of  
10 generalized administrative expense claim under Section 503(b)  
11 without reference to Section 503(b)(1)(A). Your Honor, that  
12 argument never appeared in the government parties' opening  
13 brief. It was raised for the first time in reply in one  
14 paragraph. It's also, we believe, not terribly consistent  
15 with the First Circuit's admonition in *Hemingway*  
16 *Transportation* that the categories of administrative expenses  
17 are to be strictly construed, and if the Oversight Board is  
18 proposing essentially a standard list approach to Section  
19 503(b), and -- we're not sure how that fits with *Hemingway*  
20 *Transportation's* view of administrative expenses.

21 Turning to the last point Mr. Bienenstock raised  
22 about sort of laws of nature and how post-petition claimants  
23 are to be paid, I think this is actually quite key, because  
24 this PROMESA context is really quite different from an  
25 ordinary commercial bankruptcy. In this case, post-petition

1 claimants, the Oversight Board and AAFAF and the government  
2 parties can pay them in the ordinary course. Those claimants  
3 can pursue their claims in the Commonwealth courts without  
4 regard to the automatic stay, and they're not discharged by  
5 confirmation of a plan.

6 But all of this is really quite distinct from an  
7 ordinary commercial bankruptcy. In a commercial bankruptcy,  
8 the estate is generally distributed at the conclusion of the  
9 case and post-petition creditors have no recourse. But here  
10 that's not the case, and there's no special need to provide an  
11 incentive to post-petition creditors when the instrumentality  
12 remains in place even post confirmation.

13 And, in fact, I point out, contrary to  
14 Mr. Bienenstock's comments here --

15 (Sound played.)

16 MR. CASSEL: -- *City of San Bernardino* confirmed a  
17 Chapter Nine plan without any administrative expense claims  
18 being granted under Section 503(b)(1)(A), so it's not  
19 absolutely necessary. In fact, there have been successful  
20 Chapter Nine restructurings without them.

21 THE COURT: Thank you.

22 MR. CASSEL: So unless the Court has any questions, I  
23 request the motion be denied.

24 THE COURT: Thank you.

25 I turn now to Ms. Mendez Colberg for UTIER.

1 MS. MENDEZ COLBERG: Good morning, Your Honor. This  
2 is Jessica Mendez. Can you hear me?

3 THE COURT: Good morning. I can hear you. Thank  
4 you.

5 MS. MENDEZ COLBERG: Thank you.

6 For the record, Jessica Mendez Colberg on behalf of  
7 UTIER and the retirement system of the PREPA employees.

8 First, Your Honor, the issue of this motion is a  
9 matter that is not ripe for adjudication. And this is not a  
10 litigation tactic to deprive the Court of subject matter  
11 jurisdiction, as the government parties referred to. It is a  
12 constitutional mandate.

13 Here, the issuance of the Certificate of Energy  
14 Compliance is being challenged before the Puerto Rico Court of  
15 Appeals, and this certificate is a legal requirement for the  
16 validity of the LUMA contract. And if it is determined that  
17 the certificate is not valid, then the T&D contract is null.  
18 Thus, LUMA would have no right to receive payment for the  
19 administrative expenses at this time. And if this motion were  
20 to be granted, there would be further litigation.

21 And as the Court pointed out, if this is a conceptual  
22 approval of the expenses, rather than a specific approval for  
23 administrative expenses, this is then a premature issue that  
24 goes to whether it's -- that goes to the requirement of the  
25 actual and necessary expenses on this matter and the benefit

1      of those expenses for the debtor.

2                Now, with respect to the benefit, who benefits from  
3      the front-end transition services? Only LUMA does. The LUMA  
4      contract is like if a landlord rents its property, but the  
5      landlord pays for every cost associated with the use of his  
6      own property, including the rent, while the tenant enjoys it  
7      and even makes a profit out of it without those profits  
8      benefiting the landlord.

9                The services that LUMA will provide during the  
10     transition period are not for PREPA. These are tasks that  
11     LUMA will perform in order to set up shop in Puerto Rico under  
12     the T&D contract for which PREPA has to pay for everything  
13     with no investment from LUMA.

14               And how can it be said that the front-end transition  
15     obligations provide substantial benefit to PREPA when even the  
16     Fiscal Plan recognizes the deficits precisely because of the  
17     payment of these obligations. And this is not challenging the  
18     certification of the Fiscal Plan. This is questioning the  
19     request for relief on the administrative expenses itself.

20               Now, the government parties question our use of the  
21     word "dismantle," but the term "dismantle" came directly from  
22     the administrative expense motion, and now they would rather  
23     use the term "transform" PREPA. There is no benefit for the  
24     debtor if the goal is to dismantle the debtor.

25               Now, the government parties say that these services

1      will provide substantial benefits in the future, but they fail  
2      to specify how those services will actually benefit PREPA now  
3      when they all revolve around things that LUMA needs to work on  
4      as an essential for conditions to take over the operation.

5              And when they say that LUMA must invest substantial  
6      up front time familiarizing with PREPA's processes, PREPA will  
7      pay for all of this, sidestepping other creditors with  
8      priority like the retirement system. And the fact that PREPA  
9      will continue to own the T&D --

10              (Sound played.)

11              MS. MENDEZ COLBERG: -- does not speak at all on how  
12      the transition services benefit PREPA now and -- just LUMA.

13              Now, with respect to the request under Section 503,  
14      we join the Fuel Line Lenders' argument and point out that  
15      knowing that the remedy cannot be granted as requested, the  
16      government parties go further to request the remedy under  
17      Section 503 in general pursuant to Section 105 of the  
18      Bankruptcy Code.

19              Now, this would mean an amendment to PROMESA where  
20      Congress was careful enough as to not incorporate the concept  
21      of the estate into the proceedings, as it did in Chapter Nine  
22      cases. Also, to the context of Section 105 of carrying out  
23      the provisions of the Code, and in this case, PROMESA, it's  
24      not a logis -- this is not a logistical entitlement that can  
25      lead to granting any remedy, especially if it contradicts

1 provisions of the statute.

2 Under Section 105, the Court cannot cite that the  
3 provisions of the Bankruptcy Code and PROMESA, along with what  
4 other courts have already stated on this matter when it comes  
5 to Chapter Nine, that apply also to these proceedings under  
6 Title III -- other parties have argued that the motion here  
7 does not comply with the concept of paying actual expenses  
8 when services have not been performed yet and have been  
9 recognized by the Oversight Board, as Mr. Bienenstock  
10 established in his argument. So here, Your Honor, the Court  
11 cannot grant the requested relief under the laws of nature  
12 only.

13 To conclude, in the absence of a bankruptcy estate,  
14 administrative expenses claims should be limited to the  
15 expenses incurred in connection with the proceedings and not  
16 for operating expenses, as the government parties are  
17 requesting here today. So therefore, Your Honor, the  
18 administrative expenses motion should be denied.

19 If the Court has no further questions for us, that  
20 would be our argument.

21 THE COURT: Thank you, Ms. Mendez.

22 I now turn to Mr. Qureshi for Cobra for three  
23 minutes.

24 MR. QURESHI: Good morning, Your Honor. Abid  
25 Qureshi, Akin Gump Strauss Hauer & Feld, on behalf of Cobra.

1       May I proceed, Your Honor?

2                   THE COURT: Yes, please.

3                   MR. QURESHI: Thank you.

4                   Your Honor, Cobra's objection to the LUMA motion is  
5                   once again grounded in consideration of fundamental fairness  
6                   and equity, and in particular, Your Honor, what we think to be  
7                   the very important principle in any bankruptcy context, that  
8                   similarly situated creditors be treated the same.

9                   And fundamentally, Your Honor, what PREPA is  
10                  proposing with LUMA fails to adhere to that principle. That  
11                  is a principle that we think this Court can and should  
12                  enforce.

13                  And in particular, Your Honor, PREPA argues that the  
14                  LUMA expenses are actual and necessary under 503(b),  
15                  notwithstanding the fact that the services have not yet been  
16                  performed. In stark contrast, as Your Honor is aware, Cobra  
17                  has performed and remains uncompensated for services that  
18                  exceed 200 million dollars in value.

19                  The Cobra contract, like the LUMA contract, was  
20                  approved by PREPA --

21                  (Sound played.)

22                  MR. QURESHI: -- after multiple levels of review.  
23                  And, Your Honor, each of FEMA, as well as the Rand  
24                  Corporation, have already affirmed the reasonableness of  
25                  Cobra's costs and its services. And the Rand report in

1     particular provides a detailed and independent assessment of  
2     the reasonableness of both the rates charged and the services  
3     provided. Indeed, Your Honor, I suspect that one of the  
4     driving reasons why LUMA requested a -- or indeed insisted  
5     upon administrative expense approval in advance is precisely  
6     to avoid the fate that has befallen Cobra.

7                     So what are we asking for in this context, Your  
8     Honor? What we are asking for is that to the extent this  
9     Court is inclined to approve the LUMA motion, that the  
10    approval should be conditioned upon Cobra similarly being  
11    permitted to proceed now to make its showing that its services  
12    were actual and necessary under Section 503(b) of the  
13    Bankruptcy Code.

14                    To be clear, Your Honor, our argument with respect to  
15    Cobra would fully preserve PREPA's argument that, as a result  
16    of the pending criminal proceedings or the pending FEMA review  
17    process, our claims should not ultimately be allowed. We're  
18    not suggesting that that be prejudiced in any way, but we do  
19    think, Your Honor, that the underlying principle that  
20    similarly situated creditors be treated the same is a very  
21    important one. It's fundamental to the bankruptcy process,  
22    and it's a principle that should be adhered to in the present  
23    context.

24                   And with that, Your Honor, I'm happy to address any  
25    questions the Court may have.

1                   THE COURT: Thank you, Mr. Qureshi. I don't have any  
2 questions for you at this time.

3                   And so I will turn to Ms. Conde Torres for Whitefish.  
4 Please remember to unmute both the phone and the computer  
5 screen.

6                   Is Carmen Conde Torres on the line? Ms. Ng, she's  
7 registered?

8                   MS. CONDE TORRES: Yes, I'm registered and I am  
9 unmuted.

10                  THE COURT: Oh, very good. Thank you.

11                  MS. CONDE TORRES: May I address you, Your Honor?

12                  THE COURT: Yes, please.

13                  MS. CONDE TORRES: Yes, Your Honor. PREPA's response  
14 to Whitefish's limited objection is that the impact of LUMA's  
15 estimated administrative expense of 136 million in one year on  
16 all the creditors of same high priority status is not  
17 relevant.

18                  Your Honor, PREPA is wrong. LUMA's administrative  
19 expense requirement cannot be taken isolated or in a vacuum of  
20 other fiscal responsibilities of same rank. PROMESA's purpose  
21 is to stabilize finances as a whole in order to incentivize  
22 business. PREPA's current financial condition is a serious  
23 concern even to LUMA. The current risk is to undisputed  
24 existing administrative expense creditors waiting in line for  
25 over two years. Why must we take the risk?

1                   It is undisputed, Your Honor, that Whitefish provided  
2 the greatest benefit to this debtor under the greatest  
3 emergency faced by Puerto Rico after Hurricane Maria and in a  
4 total blackout of the island. Whitefish restored over 200  
5 miles of transmission lines, the backbone of PREPA. Whitefish  
6 energized the hospitals, the main businesses, and the City of  
7 San Juan.

8                   For over two and a half years, Whitefish has received  
9 no payment. It is owed, as of this date, 141 million dollars,  
10 of which 106 million are principal owed. LUMA is requesting a  
11 blanket order and a comfort order for 173 million dollars. As  
12 to Whitefish's contract, there has been no improprieties at  
13 all found.

14                   (Sound played.)

15                   MS. CONDE TORRES: Termination of the contract was  
16 not related to performance, and OIG's only concern is the  
17 reasonability of certain fees, which are very similar to  
18 LUMA's. For over two years --

19                   THE COURT: Ms. Conde Torres, would you wrap up?  
20 Your time has expired.

21                   MS. CONDE TORRES: Yes. PREPA'S Omnibus Reply has  
22 failed to address Whitefish's concerns, has failed to provide  
23 assurances of collection to creditors of equally high priority  
24 status. Until such concerns are satisfactorily addressed,  
25 this millionaire blanket order requested by PREPA for

1      administrative expense shall not be allowed, Your Honor.

2                    THE COURT: Thank you.

3                    And now I'll return to Mr. Bienenstock for rebuttal  
4      remarks.

5                    MR. BIENENSTOCK: Thank you, Your Honor. I'll have  
6      to go a little bit quickly to address everything.

7                    THE COURT: But keep your voice up and make sure that  
8      your words are distinct, please.

9                    MR. BIENENSTOCK: Yes. Yes, Your Honor. And thanks  
10     for the reminder.

11                  THE COURT: I'm starting your three minutes now.

12                  MR. BIENENSTOCK: Thanks. Thanks for that, too.

13                  Okay. The Committee's objection that the  
14      supplemental agreement provides LUMA Energy a veto over the  
15      Plan is not relevant to this. For all the Committee knows,  
16      PREPA could have said, and could say at any time to LUMA  
17      Energy, we don't want to do a plan that you don't find  
18      satisfactory, because you're operating the transmission and  
19      distribution.

20                  But again, that's really -- if we were asking to  
21      assume a contract for the Court's approval, that would be  
22      relevant. It's not relevant here.

23                  In terms of the Fuel Line Lenders' objections of  
24      "property of the estate" not being the same thing as "estate,"  
25      I'd like to give an analogy. When people in my firm write in

1 a pleading "at this point in time," I immediately cross out  
2 "at this point in" because point in time is the same as time.  
3 Property of the estate is the estate. It has no other  
4 meaning. So to say property of the estate means property of  
5 debtor but estate doesn't mean debtor's property is just  
6 wrong.

7 (Sound played.)

15                   We understand that some people think this is, quote,  
16 dismantling PREPA. We don't think it's dismantling. It's  
17 improving. But again, AAFAF asked the Court to weigh in on  
18 the contract, not the issue at hand. In terms of fundamental  
19 fairness, Cobra's issue is not an admin claim. It is being  
20 treated similarly. Cobra's issue is whether the claim should  
21 be allowable given the criminal proceedings and everything  
22 else.

23                   And as far as Whitefish is concerned, everyone doing  
24 business with PREPA creates admin claims if they satisfy their  
25 obligations. So this motion has no impact on the risk to

1      Whitefish or anyone else. Every day that PREPA does business,  
2      claims are accrued. They're administrative under PROMESA.  
3      And so their objection that it's bad that the Court recognize  
4      that here isn't meritorious because their concern about risk  
5      is not impacted by what the Court does here. They're impacted  
6      by every liability that PREPA incurs every day, regardless of  
7      what the Court does on this motion.

8                      Subject to the Court's questions, those were my  
9      responses, Your Honor.

10                     THE COURT: Thank you, Mr. Bienenstock. I have no  
11      further questions for you.

12                     The Court reserves decision and will issue a written  
13      decision promptly. I thank counsel for their arguments.

14                     The final contested matter on the Agenda this morning  
15      is the UCC's urgent motion to lift the stay to pursue its  
16      objection to GO priority. That is Docket Entry No. 13726 in  
17      case 17-3283. We have a total of 20 minutes allocated, and we  
18      begin with Mr. Despins, who has six minutes.

19                     MR. DESPINS: Good morning -- good afternoon, Your  
20      Honor. Good morning. Can you hear me?

21                     THE COURT: It's still morning, and I can hear you.  
22      So please keep your voice up.

23                     MR. DESPINS: Some of us are actually in a different  
24      time zone.

25                     THE COURT: It's morning here.

1                   MR. DESPINS: So Your Honor will recall that on March  
2 10th, you entered the Order staying our GO Priority Objection.  
3 And at that -- at that time, there was a proposed plan that  
4 reflected the settlement with some of the GO noteholders. And  
5 obviously we disagreed with that at the time, but there was  
6 ostensibly a basis to do it, which was this Plan and the  
7 settlement.

8                   We disagreed at that time, also, and I think it's  
9 important to go through that, because we believed that the  
10 request we were requesting was very narrow, meaning that an  
11 objection with respect to -- solely with the priority of  
12 whether they're entitled to priority in Title III or not is  
13 very narrow. It does not involve discovery. And also because  
14 the Board had already taken the position that there are no  
15 state law or territory law priorities in Title III. But  
16 nevertheless, the Court issued the Stay.

17                  And at the time, we pointed out that, you know, the  
18 best way to resolve these issues, we know from COFINA, which  
19 is the only Title III case that's been resolved, we know that  
20 it's to bring them on for a resolution. And ultimately,  
21 that's how COFINA was resolved.

22                  And also, the point we made then is that the Court is  
23 already resolving very complex, much more complex and much  
24 more fact-intensive issues right now with ERS, the monolines,  
25 et cetera, and therefore, there was no compelling reason not

1 to go forward. But in any event, there was a basis at the  
2 time.

3 We renewed our motion in July saying, Judge, that  
4 basis doesn't exist anymore. And Your Honor adjourned or  
5 scheduled our motion on that -- on our motion, the hearing on  
6 our motion to today. And what time shows -- what we know now  
7 is that we were right in July, because there was no deal then,  
8 and we're still right today in the sense that the Board is  
9 very clear today that it's the hope of a settlement. They  
10 want to reach a settlement, which is a worthwhile goal.

11 We don't begrudge them that, but that's the only hook  
12 that they have. There's no other hook than the desire to  
13 settle. They list a number of issues that are impediments to  
14 achieving that goal, including the election, the fact there  
15 are elections in Puerto Rico, and the point is that nothing is  
16 going to happen, or there's no imminent settlement at all.

17 And our position has always been, if they have a  
18 settlement, ultimately they're free to bring it to court at  
19 any stage of the litigation that we would be authorized to  
20 continue, which is our objection to the claims. So our point  
21 is that, at this point, there is no basis to deprive us of our  
22 statutory right to object and to proceed with our objection  
23 based on this desire to settle and this concept that we're  
24 somehow invading exclusivity, it's just made out of whole  
25 cloth.

1                   There's no precedent for that. There's no basis for  
2 that. And we believe that after four years, since the  
3 appointment of the Board, they've had tons of time to  
4 accomplish that. So this is not trying to take -- it's not a  
5 gotcha saying, "Oh, you're not ready now, so we want to be  
6 heard." No. This has been percolating for more than four  
7 years, and therefore, we think it's important that it goes  
8 forward.

9                   And this is -- the arguments the Board is making are  
10 particularly weak in light of the lack of Section 1106, the  
11 lack -- in the PROMESA statute. 1106 is the hook that allows  
12 a debtor in possession of trustee to say, hey, I should be  
13 controlling the claims process. That position was not  
14 imported into -- was not enacted into PROMESA.

15                   (Sound played.)

16                   MR. DESPINS: And therefore, that -- you know, it's a  
17 compelling reason why this objection should go forward. And  
18 Your Honor, unsecured creditors are being deprived their due  
19 process rights today because of this. As I mentioned, there  
20 is the claims objection process that's unfolding. There's a  
21 mention in the Reply, or the Objection filed by the Oversight  
22 Board that sort of in a simple way it says, well, we'll talk  
23 to the Committee later when we have a better understanding of  
24 the size of their claims.

25                   The subtext of that is, we'll get all the claims

1 disallowed based on the fact that people think that they have  
2 to get three percent, or 3.8 percent. And that is just wrong  
3 because, you know, people are not going to spend money, hire  
4 counsel to defend their claims if they think they're going to  
5 get three percent. It's a real issue. And we believe that is  
6 a denial of due process to the Committee and to the claimants  
7 it represents, and, therefore, it is fundamental that this go  
8 forward at this point.

9 Thank you, Your Honor.

10 THE COURT: Thank you, Mr. Despins.

11 I now have Ms. Miller for two minutes for Ambac.

12 MS. MILLER: Good morning, Your Honor. Atara Miller  
13 from Milbank for Ambac.

14 THE COURT: Good morning.

15 MS. MILLER: Your Honor, it's clear that the  
16 Oversight Board here is using the Stay to continue to try to  
17 negotiate and devise a new settlement and a new plan that  
18 again favor certain creditors over others without legal  
19 support. And what's particularly telling, in some of the  
20 changed circumstances, and Mr. Despins identified some of  
21 them, but some of the other notable changes are -- and  
22 developments since the Stay was first enacted, is that the  
23 Oversight Board continued pressing its objection to the  
24 revenue bond claim.

25 And in particular, in that regard, it raised in the

1 Lift Stay Motion initially, and we see it again in the -- in  
2 the summary judgment motions that are pending, this idea in  
3 their legal position that Title III preempts all state law  
4 priorities. That's important, because the purported GO  
5 priority is the foundational touchstone of the PSA and the  
6 settlement. And now that there isn't a settlement, it would  
7 seem like the perfect opportunity, once the Oversight Board is  
8 already litigating that issue and pressing their position on  
9 the effect of Title III on state law priorities, to have that  
10 issue resolved across the board for creditors uniformly so  
11 that we can all understand what relative priorities we walk  
12 into the restructuring process with or not, rather than, you  
13 know, create a settlement with the group they decided is  
14 easiest to settle with, hang it on this asserted and purported  
15 priority, say nobody can get paid unless they get paid, so you  
16 should be saying thank you to your 3.9 cents because they're  
17 only getting 75 cents, and move on from there.

18 And while there's a settlement, we understand that  
19 there is at least a jurisprudential basis for this Court to  
20 impose a stay. But at this point, there is no settlement.  
21 Creditors have the right --

22 (Sound played.)

23 MS. MILLER: -- to pursue claim objections, and we  
24 think that the Stay should be lifted.

25 THE COURT: Thank you, Ms. Miller.

1 MS. MILLER: Thank you.

2 THE COURT: Now for the Oversight Board. We have ten  
3 minutes.

4 MR. BIENENSTOCK: Thank you, Your Honor. This is  
5 Martin Bienenstock of Proskauer Rose, LLP, for the Oversight  
6 Board, as Title III representative of the debtors.

7 I'm going to go in order of the points I copied down.  
8 Mr. Despins mentioned that the Court is already resolving  
9 complex issues concerning ERS and the monolines, et cetera.  
10 That's correct. And that is because the Oversight Board, as  
11 debtors' representative, asked the Court to do that; and in  
12 some cases, the other -- the counterparties, whether it be the  
13 ERS bondholders or the monolines, also asked for that.

14 But that's quite different than the Court proceeding  
15 to resolve an issue that is key for the Oversight Board to use  
16 in formulating a plan, which would no longer be available for  
17 that purpose if it were litigated. And I'll get to  
18 Ms. Miller's comments about favoring creditors in a few  
19 moments.

20 The argument that the desire to settle is the only  
21 hook the Oversight Board has, which the Committee argued, is  
22 simply wrong. The hook, to use their language, is what we  
23 wrote in our pleadings, which is exclusivity. We were granted  
24 the exclusive right to propose a plan. We can't do that if a  
25 key issue in the plan is hijacked.

1           But then there's another issue that the Committee and  
2 the monolines have not raised, and I call that issue for this  
3 purpose "looking down the line." Let's hypothesize that the  
4 Court were to allow the priority of the GO claims to be  
5 litigated and for the Committee to be a litigant, as it has  
6 requested. That doesn't mean that the Committee can control  
7 the objection or the settlement to the objection.

8           They are -- the Committee is proceeding based on  
9 Bankruptcy Code Section 502(a), which says a party in interest  
10 can object to a claim. There are 165,000 proofs of claim  
11 filed in these cases. There may not be 165,000 claimants who  
12 ask to participate or who impose their absolute right to  
13 participate in this priority objection, but there's sure going  
14 to be more than one.

15           If that were to go forward, clearly the Oversight  
16 Board would have to appear, as per itself and as  
17 representative of the debtors, in that litigation. And one  
18 has to believe that other creditors who feel they have an  
19 interest would want to participate, too. So what does that  
20 mean?

21           Well, that means that absent the Court determining  
22 that while everyone can appear and be heard, only the debtor  
23 and the debtors' representative can control the objection and  
24 the settlement, then we're back -- if the Judge did not decide  
25 that, if the Court did not decide that, then we have a war

1      without any rules or mode of resolution, which clearly cannot  
2      be the case.

3           So I would submit, Your Honor, that the Committee has  
4      not connected the dots. The fact that it has standing to  
5      object doesn't mean it can control the objection or settle the  
6      objection. And unless it could, which it has shown no  
7      authority why it could, then it gains nothing by this, and  
8      nothing would be gained by the Court allowing that process to  
9      go forward.

10           In terms of Section 1106 not being incorporated, 1106  
11      is not incorporated into Title III, as it is not incorporated  
12      into Chapter Nine, because of the Tenth Amendment. Of course  
13      the debtor has power to control claims against the debtor.  
14      And notably, the GO claims are not against the Committee, and  
15      they're not against Ambac. They are against the debtor.

16           The Committee's constituency may be affected by that  
17      priority, as Ambac may be affected, but the claims are not  
18      against them. And the fact that 1106 is not incorporated into  
19      Title III only shows that it didn't need to be, because the  
20      debtors' general control under the Tenth Amendment, which  
21      Congress has given the territories the benefit of, supplants  
22      or amounts to the equivalent of 1106.

23           Ambac's argument that the Board wants to use the Stay  
24      to favor creditors fails on its face. And the reason why it  
25      fails on its face is this: To the extent that the Board comes

1 up with a plan that is confirmable, then whatever the Board is  
2 doing in negotiating with creditors is perfectly fine and  
3 legal. To the extent that the Board favors creditors, certain  
4 creditors, contrary to the law, the plan is not going to be  
5 confirmed. So Ambac's argument goes nowhere, because it won't  
6 have a confirmable plan confirmed against it if the Board were  
7 doing something wrong, and that's its protection.

8 Your Honor, those are, subject to the Court's  
9 questions -- well, only one other point I wanted to make. The  
10 deal with the existing bondholders still exists. Now, we  
11 understand that the Committee and Ambac say that, in light of  
12 the new Fiscal Plan, that deal, they say it's dead. We say it  
13 needs to be amended.

14 As Your Honor knows, plans of adjustment, like  
15 Chapter 11 reorganization plans, get amended right up through  
16 the confirmation hearing. There is nothing wrong with that.  
17 It doesn't mean deals are dead. It means that they need to be  
18 adjusted.

19 And as Your Honor knows, there is ongoing mediation.  
20 There is a desire on all parties' parts to get to a deal, to  
21 finish the debt restructuring, because that will help  
22 immeasurably in getting the Commonwealth to once again have  
23 market access. So to say the deal is dead and, therefore,  
24 there's no reason for this, aside from the other reasons that  
25 the litigation wouldn't accomplish what they think it would

1      accomplish, their argument is simply wrong that the deal is  
2      dead.

3              A need to amend is common, constant, and doesn't  
4      change the fact that the parties are at the table desiring to  
5      hammer out a revised deal. Thank you, Your Honor.

6              THE COURT: Thank you.

7              Would you please address Mr. Despins' concern that  
8      with substantive objections being raised, unsecured creditors  
9      who might otherwise want to fight for the vitality of their  
10     claims may be discouraged from doing so by the fact that the  
11     only thing on the table is a plan that provides so little for  
12     the unsecured creditors, whereas the UCC and others have a  
13     vision of a world in which there might be a greater recovery  
14     worth fighting for?

15             MR. BIENENSTOCK: Well, let me start by saying  
16     that --

17             (Sound played.)

18             MR. BIENENSTOCK: -- the Oversight Board -- the  
19     Oversight Board wants to maximize creditor recoveries, too,  
20     although we totally understand that when we come out with a  
21     plan that has very small recoveries for some creditors, it  
22     doesn't seem that way to them.

23             First, we have to recognize what we're dealing with.  
24     We've got about 18 billion of GO bonds and another five plus  
25     billion of GO guaranteed debt that has the same priority.

1      That is the lion's share of the liability here. A lot of the  
2      other unsecured debt that was not GO debt has actually been  
3      paid. And, you know, Mr. Despins doesn't recognize that, but  
4      he knows that that has happened during the case.

5              All I can say is what will be left after a  
6      settlement -- the GO debt is going to get the lion's share of  
7      the assets under any scenario, because it's the lion's share  
8      of the debt, of the total debt. To the extent that a  
9      settlement of the priority is out of bounds, the Court is not  
10     going to approve it.

11             So it's not clear to us that the other unsecured  
12     claimholders are disadvantaged at all, because, I mean,  
13     frankly, if they -- if they lose the priority challenge, they  
14     will come out worse. They could lose a hundred percent of  
15     what they -- what they would lose, a hundred percent of what  
16     they have. They are not satisfied with what they have, and we  
17     are sensitive to that and understand it. But they have a  
18     gigantic downside, so they -- that's the most I can say about  
19     what their incentive is, Your Honor.

20             THE COURT: Thank you.

21             And now I'll return to Mr. Despins for rebuttal.

22             MR. DESPINS: Yes, Your Honor.

23             So let me just address the last point first. The  
24     fact that the bondholders will get the lion's share, that's  
25     such a misleading statement. If the priority does not apply,

1      we're pari passu with them. So if they get 60 cents on the  
2      dollar, we would get 60 cents on the dollar. If they get 80  
3      cents on the dollar, we would get 80 cents on the dollar. So  
4      this is a non sequitur.

5                And there is a huge prejudice. Practically, it's  
6      almost -- I know you're going to think it's an exaggeration,  
7      but denial of the advice of counsel -- I mean, not in a  
8      criminal context, but the point is that no sane creditor would  
9      hire counsel for a million dollar claim knowing that what they  
10     can get is 30,000 dollars, which is the current "settlement"  
11     that the Board proposed on that issue. They would never do  
12     that. But they're forced to go through that now, while we're  
13     precluded from showing them and from prevailing on the  
14     argument that we're pari passu with the bondholders. That's a  
15     huge issue.

16               The argument that there is a -- and that is an issue  
17     for today, Your Honor. The argument that somehow the deal is  
18     not dead -- we haven't terminated. Of course they're not  
19     going to terminate it, Your Honor, because there's a symbiotic  
20     relationship between the bondholders and the Board, because  
21     they believe that, they say that the deal is not dead. That,  
22     Your Honor, will preclude us from going forward.

23               So that's -- these are the magic words they need to  
24     say and they'll get protected from an objection. And  
25     obviously the bondholders are not anxious to have that

1      objection heard, because they know the Board is going to be in  
2      a position of actually taking the same position they have  
3      taken before with respect to the priorities in Title III and  
4      say there are no priorities, no state law priorities in Title  
5      III. That's very important.

6              The issue of controlling the settlement, we've never  
7      said we could control the settlement. We want our objection  
8      to go forward. And if, in fact, after they're -- hearing the  
9      objection, or during that time they come back and say, Judge,  
10     we have a settlement, you know, we're not saying they can't do  
11     that. We will fight them, depending on the settlement. If  
12     the settlement is pari passu or close to it, then we may be  
13     okay with it. But if not, we may contest that. But we're not  
14     asking the Court today to rule that we have the exclusive  
15     right to settlement.

16              And this issue that there's going to be disorganized  
17     war --

18              (Sound played.)

19              MR. DESPINS: Your Honor, two seconds to finish.

20              THE COURT: Yes.

21              MR. DESPINS: In ERS, we filed an objection, the  
22     ultra vires objection. The Committee did that. And is there  
23     chaos in that case? No. There are a number of parties  
24     involved. They're taking positions on our objection. And  
25     that's going to be heard and decided in due course.

1                   It's exactly the same. This concept that somehow  
2 there's going to be chaos is nowhere -- there's no basis for  
3 that, Your Honor.

4                   And also, the last point is, Your Honor, if they want  
5 to say that they have a right to stop us from proceeding  
6 because of their exclusive right to file an objection, which  
7 we don't believe they do, or because of their exclusive right  
8 to file a plan, let's be honest, intellectually honest in the  
9 rule and actually say that's the basis to do that. We don't  
10 believe there's any such basis, but at least we should be  
11 intellectually honest about it and not trying to say, because  
12 we haven't terminated the settlement.

13                  And so, Your Honor, on all -- for all these reasons,  
14 we're asking you to terminate the Stay today and allow us to  
15 proceed with the GO Priority Objection. Thank you, Your  
16 Honor.

17                  THE COURT: Thank you, Mr. Despins.

18                  And thank you, all counsel, for those arguments and  
19 for the submissions in advance of today's proceedings, which I  
20 have read thoroughly. And I've listened very carefully to  
21 everything that has been said.

22                  Before the Court is the *Urgent Motion of the Official*  
23 *Committee of Unsecured Creditors to Lift Stay to Allow*  
24 *Committee to Pursue Objection to GO Priority*, which is Docket  
25 Entry No. 13726 in Case No. 17-3283. I will refer to it as

1      the Motion.

2              This Motion was filed by the UCC, which has filed an  
3      objection to general obligation, or GO, bondholder priority in  
4      the form of an Omnibus Objection of the Official Committee of  
5      Unsecured Creditors, Pursuant to Bankruptcy Code Section 502  
6      and Bankruptcy Rule 3007, to Claims Filed or Asserted Against  
7      Commonwealth by Holders of General Obligation Bonds Asserting  
8      Priority Over Other Commonwealth Unsecured Creditors, which is  
9      Docket Entry No. 10638 in Case No. 17-3283. I'll refer to  
10     that as the GO Priority Objection.

11              That GO Priority Objection was stayed by this Court's  
12     Final Order regarding, A, stay period; B, mandatory mediation;  
13     and C, certain deadlines related thereto, which is Docket  
14     Entry No. 12189 in Case No. 17-3283. I refer to that as the  
15     Stay Order.

16              The Motion requests entry of an order modifying the  
17     Stay Order to allow the UCC to pursue its GO Priority  
18     Objection. The Motion is opposed by the Oversight Board,  
19     which seeks to preserve the Stay while it pursues a settlement  
20     of GO bond-related issues in furtherance of a plan of  
21     adjustment with which it can move forward.

22              The Court has considered carefully the parties'  
23     submissions and arguments made today. The Court has  
24     jurisdiction of this motion practice pursuant to Section  
25     306(a) of PROMESA.

1                   The Court now makes this oral ruling and reserves the  
2 right to make nonsubstantive corrections in the transcript of  
3 the ruling. The Motion is denied without prejudice for the  
4 following reasons. The Stay was put in place for the purpose  
5 of allowing the Oversight Board to pursue its efforts to  
6 confirm a plan of adjustment that involves the settlement of  
7 certain key issues. The UCC alleges that the particular  
8 settlement at the heart of the Proposed Plan of Adjustment is  
9 long gone, and that the Plan confirmation process is,  
10 therefore, indefinitely paused. Nevertheless, the Oversight  
11 Board has proffered that the relevant parties are engaged in a  
12 good faith effort to forge a revised agreement that can serve  
13 as the predicate for a confirmable plan of adjustment.

14                   That negotiations persist refutes the notion that no  
15 modified agreement can ever be reached, and the Court declines  
16 to pronounce dead at this juncture a strategy that may still  
17 have vitality. More importantly, the Stay need not be  
18 continued indefinitely. It can be kept in place for a further  
19 period, as the Court finds appropriate under the  
20 circumstances, subject to future review.

21                   Of course, the ultimate duration is not yet certain  
22 and can't be. Among other things, there are the ongoing and  
23 potential future further effects of COVID-19, hurricanes,  
24 drought, earthquakes, membership turnover on the Oversight  
25 Board, political change within the Commonwealth, and

1      unforeseen future events. Such variables may cumulatively  
2      extend the timetable for reaching a confirmable plan of  
3      adjustment, but they neither doom the project nor portend an  
4      endless Stay. Nor is there any evidence that the Oversight  
5      Board has any incentive to drag on negotiations in a truly  
6      indefinite manner.

7              Turning to the *Villafañe-Colon* factors, the parties  
8      argue that these factors, which the Court looked to in  
9      determining that it was appropriate to impose the current  
10     Stay, support their respective positions. Those factors are:  
11     (1) hardship resulting from not staying a proceeding; (2) the  
12     potential prejudice to parties if the Stay is granted; and (3)  
13     the economical use of party and judicial resources.

14              Based on these factors, the Court found in March of  
15     this year that a stay was merited with respect to the GO  
16     Priority Objection. The Court now finds that these same  
17     factors favor keeping the Stay in place for a further period  
18     of time.

19              First, the Commonwealth would suffer hardship from a  
20     termination of the Stay. It is possible that allowing the GO  
21     Priority Objection to proceed at this time could cause the  
22     Oversight Board settlement negotiations to collapse and open  
23     the door to a large volume of litigation that would further  
24     disrupt or disrail negotiations, and would certainly ramp up  
25     the burden on the Commonwealth and the Oversight Board's

1      resources of litigating another set of complex issues. Such  
2      litigation is unlikely to be concluded quickly, particularly  
3      in light of what is already in progress and queued up, and the  
4      stakeholders' fondness for appellate litigation.

5              Second, keeping the Stay in place for the GO Priority  
6      Objection, at least for the next six months, will not unduly  
7      prejudice general unsecured creditors. The Court's prior  
8      determination on this point still holds true. The UCC's  
9      rights and unsecured creditors' rights to object to an amended  
10     Plan of Adjustment and to accept a proposed settlement are  
11     still preserved. The fact that the Oversight Board needs more  
12     time than it originally anticipated is not itself a threat to  
13     the UCC's rights.

14              Moreover, it has been made clear to anyone following  
15     these proceedings sufficiently to know the proposed allocation  
16     under the Plan proposal that is in place. It is obvious that  
17     there are arguments and continue to be arguments regarding GO  
18     priority, potential legal issues with the allocations that  
19     have been proposed, the basis of the GO Priority Objection  
20     that is proposed to be pursued, and the visions for a  
21     potential outcome of that objection. All of those arguments  
22     have been and continue to be exposed in the context of these  
23     proceedings.

24              Third, upon considering whether continuing the Stay  
25     is the most economical use of party and judicial resources,

1      the Court again finds that it is. It is highly unlikely that  
2      resolution of the GO Priority Objection could be accomplished  
3      quickly, even without discovery, given, as I've already noted,  
4      the already large volume of pending litigation, and, frankly,  
5      the parties' predilection for extensive briefing and pursuing  
6      appeals.

7              Moreover, as previously noted, the probability is  
8      high that allowing the GO Priority Objection to proceed at  
9      this time would also prompt other litigants to seek similar  
10     relief, especially if the settlement negotiations do fall  
11     apart. Keeping the stay in place for at least several more  
12     months will allow the Oversight Board, which has the sole  
13     authority to propose a plan of adjustment, the Commonwealth,  
14     and a significant group of stakeholders to continue their  
15     efforts to negotiate a settlement that could form a basis for  
16     an amended and confirmable plan of adjustment, and prevents,  
17     or at least keeps in abeyance, a scenario in which litigation  
18     flourishes and stymies forward movement.

19              Continuing the Stay currently remains the most  
20     economical use of party and judicial resources. Accordingly,  
21     the Court will enter an Order denying the Motion without  
22     prejudice to renewal no earlier than for the March 2021  
23     Omnibus Hearing. Thank you.

24              Are there any other matters that need to be addressed  
25     today? I will wait 30 seconds for anyone to unmute and state

1     their name if they wish to be heard. Remember, if you want to  
2     unmute, you have to unmute both your phone and your computer  
3     interface.

4                     (No response.)

5                     THE COURT: All right. The 30 seconds have passed.

6                     This concludes the hearing Agenda for the September  
7     Omnibus Hearing. The next scheduled hearing date is the  
8     hearing on the motions for partial summary judgment in the  
9     revenue bond adversary proceeding, which is scheduled for  
10    September 23rd, 2020, a week from today.

11                    Please note that the hearing will begin at 9:00 AM,  
12     instead of the previously announced 9:30 AM start time. The  
13     hearing will occur telephonically, and the Court will issue a  
14     procedures order providing appropriate logistical details in  
15     short order.

16                    As always, I thank the court staff in Puerto Rico,  
17     Boston, and New York for their work in preparing for and  
18     conducting today's hearing, and their ongoing outstanding  
19     support of the administration of these very complex cases.  
20     And I also thank counsel for their cooperation in these  
21     virtual proceeding procedures.

22                    Stay safe and keep well, everyone. We are adjourned.

23                    (At 11:47 AM, proceedings concluded.)

24                                     \*           \*           \*

25

1 U.S. DISTRICT COURT )

2 DISTRICT OF PUERTO RICO)

3

4 I certify that this transcript consisting of 85 pages is  
5 a true and accurate transcription to the best of my ability of  
6 the proceedings in this case before the Honorable United  
7 States District Court Judge Laura Taylor Swain, and the  
8 Honorable United States Magistrate Judge Judith Gail Dein on  
9 September 16, 2020.

10

11

12

13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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